SEVENTH
ANNUAL REPORT
OF THE OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER

1988

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OFFICE OF THE PUBLIC
COMPLAINTS COMMISSIONER

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May 24, 1989

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Dear Mr. Attorney and Madam Solicitor General:

Pursuant to Section 3(7) and Section 3(8) of the Metropolitan Toronto Police Force Complaints Act, 1984, I am pleased to enclose herein the Seventh Annual Report of the Office of the Public Complaints Commissioner.

Sincerely,

CLARE LEWIS
Public Complaints Commissioner

sp
encl.

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PART I

Overview of Complaints System
Expansion of System

PART I - OVERVIEW OF COMPLAINTS SYSTEM; EXPANSION OF SYSTEM

A. AN OVERVIEW

The Second Annual Report of the Office of the Public Complaints Commissioner, which covered the 1983 year, included a discussion of how the complaint process functions. The Third Annual Report explained the changes implemented by the new legislation, the Metropolitan Toronto Police Force Complaints Act, 1984, which became law on December 21, 1984.

A basic premise of the system is that the police force has the responsibility of performing initial investigation into complaints by members of the public. The vast majority of complaints are investigated initially by the police. The Act states that the Commissioner can take over an investigation on request of the Chief of Police, or when the Commissioner has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of the investigation, or at any time 30 days or more after the

complaint has been filed. The major part of the Commissioner's function, therefore, is not initial investigation but rather the monitoring of the police investigation into the complaint. The Commissioner also undertakes review and re-investigation of the complaint at the request of the complainant after the Chief of Police has reached a decision on the complaint.

The monitoring function is possible because the Commissioner gets a copy of all complaints as soon as they are filed, as well as a copy of all monthly investigative reports as they are completed. The Commissioner maintains ongoing communication with the Public Complaints Investigation Bureau of the Force in regard to general issues pertaining to investigation as well as with reference to particular files.

If the complainant requests a review, the Public Complaints Commissioner can re-investigate the matter, and must make a decision about the complaint on the basis of the available evidence. If the Commissioner agrees with the decision of the Chief of Police, a review report is written and sent to the complainant, the subject officer, and the Chief of Police. Whether the Commissioner agrees

or disagrees with the Chief of Police, recommendations may be made aimed at preventing the problem encountered by the complainant from recurring. Finally, if the Commissioner believes it is required in the public interest, the case may be sent to a Board of Inquiry. The Commissioner has no further decision-making power in the case.

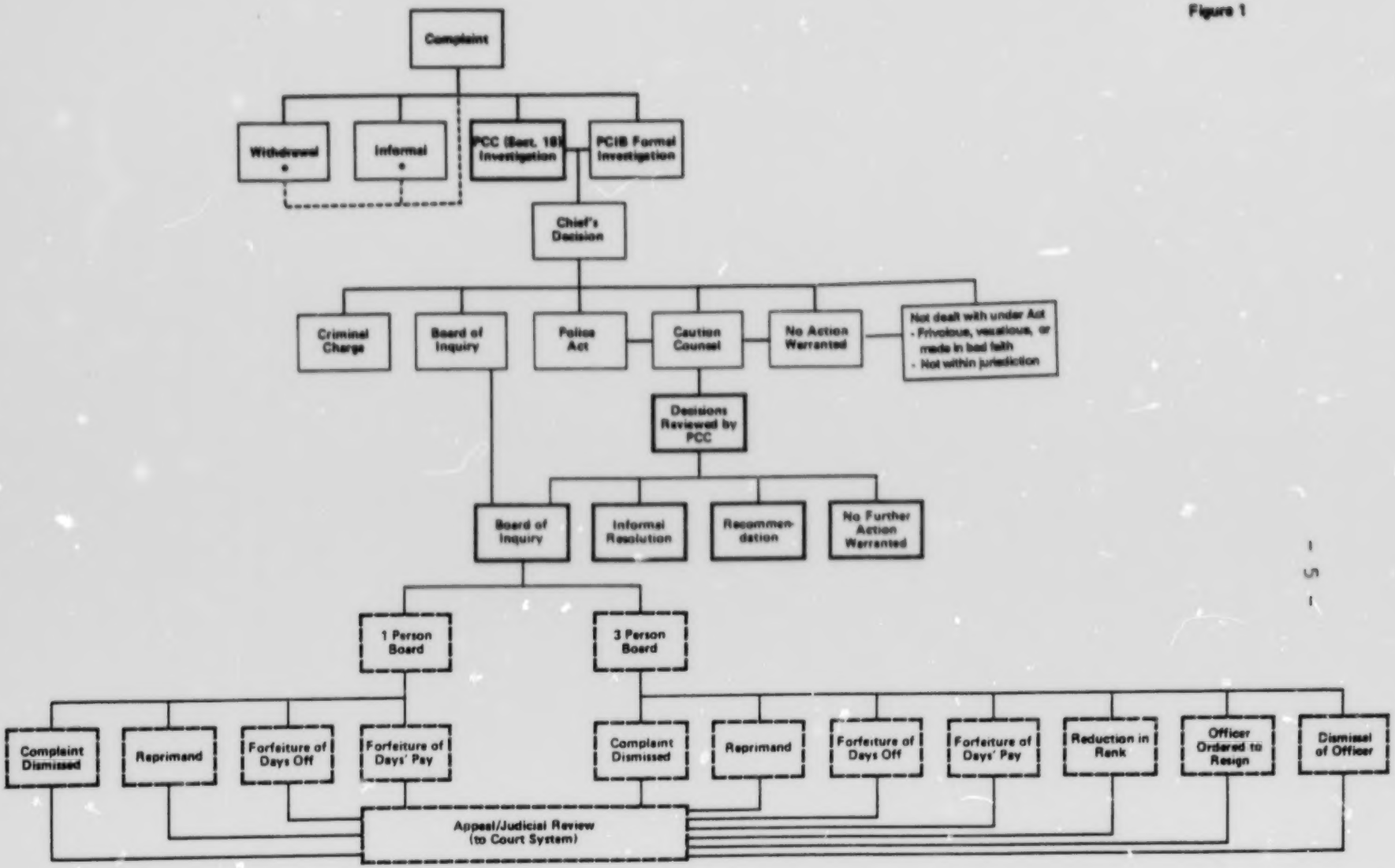
The Board of Inquiry tribunal consists of either one or three civilians depending on whether the complaint is minor or serious. The Board has the responsibility of holding a hearing, much like a court hearing, into the complaint. The officer is usually represented by counsel and the complainant may also be represented. A lawyer representing the Attorney General presents the case, witnesses are called, evidence is tendered, and arguments of law are made. The legislation provides that misconduct can be established only if proved beyond a reasonable doubt. At the end of the hearing, the Board decides whether the officer is guilty of misconduct. If the Board concludes that the officer is guilty of misconduct, it may discipline the officer. Penalties range from a reprimand to dismissal from the police force.

The chart in Figure 1 shows the possible stages of a complaint. These stages can be roughly divided into the

police investigation and resolution stage, the Public Complaints Commissioner review stage, and the Board of Inquiry stage.

Please note that in the interest of clarity, the chart illustrates only the most commonly occurring events in the complaint system.

Figure 1



Area handled by Police

Area handled by Public Complaints Commissioner

Area handled by Board of Inquiry

* When a complaint is withdrawn or informally resolved, the Commissioner reviews the file and, in certain circumstances, has the power to overturn the withdrawal or the informal resolution. In these cases, the complaint continues through the system.

B. EXPANSION OF THE SYSTEM

On November 4, 1987, the Attorney General of Ontario introduced legislation to permit the expansion of the Office of the Public Complaints Commissioner. An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984, which is currently Bill 4 before the Legislature, would allow any municipality in Ontario to choose to take advantage of the services of the Office of the Public Complaints Commissioner in respect of complaints against the local police force. Under the proposed legislation, local offices of the Public Complaints Commissioner would be established to service participating municipalities. The system would be identical to that in operation in Metropolitan Toronto with investigation in the first instance conducted by a specially designated unit of the local police force and decisions on appropriate action made by a designated senior officer of the police force. As with the Toronto system, the Public Complaints Commissioner would have both a monitoring function and a duty to conduct reviews upon request by any member of the public who is not satisfied with the resolution of his or her complaint by

the local police force. If, following a review, the Commissioner determined that the complaint should be heard by a Board of Inquiry, its members would be drawn from a panel established for the local area.

The legislation that would allow municipalities to choose this system has passed second reading in the Legislature and is before the Standing Committee on the Administration of Justice for consideration. The Committee will be receiving submissions from the public throughout the province. At the time of writing, the Committee has convened and received submissions in Thunder Bay, Ottawa and Windsor.

PART II

Research and Statistics

PART II - RESEARCH AND STATISTICS

A. INTRODUCTION

Since its inception, the Office of the Public Complaints Commissioner has routinely analysed data taken from all closed complaint files. This research activity permits the examination of the case-load from a statistical perspective, allowing trends to be identified over the years. Careful analysis and study of complaints can also lead to suggestions for improving policing generally and to specific recommendations for change. In addition, the research enables the Commissioner to evaluate the functioning of the complaints process.

In 1988 there were 594 cases closed by the Office of the Public Complaints Commissioner. A "case" involves a single complainant making one or more allegations based on a single incident or series of incidents. A case is closed when all outstanding issues with respect to the allegations have been resolved. Because cases vary in complexity, they vary in duration. Some cases may be resolved very quickly while others which require extensive investigation may last over a year.

During 1988 there were fewer cases closed than in previous years. The Metropolitan Toronto Police Force cited staff shortages at the Public Complaints Investigation Bureau as the cause of fewer police resolutions of complaints.

B. RESEARCH DATA

1. The Incident

Every complaint results from an incident in which a member of the public has some contact with the Metropolitan Toronto Police Force. The first incident may evolve into more than one contact in more than one location. The location of the primary incident is shown in Table 1. The locations are listed by frequency of occurrence, with the most common being listed first. As in previous years, the most common location of the primary incident was the street (49.9%). The next most common locations were private residences (15.3%) and police buildings (15.3%).

A single incident may give rise to several allegations. The listing of allegations is presented in Table 2. The majority of complainants (61.1%) made more than one allegation. In total, 1,229 allegations were made. For each case, details of only the six most serious allegations in each case were recorded.

TABLE 1

Location of Incident	Number	Percent
Street	296	49.9
Residence	91	15.3
Police Building	91	15.3
Public Place	84	14.1
Police Vehicle	26	4.4
Plaza/Mall	3	0.5
Schoolyard/Park	3	0.5
TOTAL	594	100.0

The 1,229 allegations are presented in Table 2. There are two ways of examining the distribution of allegations. One way is by considering the total number of allegations. Thus, the 303 allegations of assault represent 24.7% of the 1,229 allegations that were documented. The other way is by considering the number of cases. Here the 303 allegations of assault represent 51.0% of the 594 cases. The percentage distributions are presented in Table 2 and Figure 2.

The 22 categories of allegations, grouped into four major areas, are presented in Table 2. The most common allegation is that officers failed to act according to proper police procedure (41.2%). This was followed by threatening or abusive behaviour (30.4%) and by physical assaults/excessive use of force (24.7%). Personal misuse of authority was cited in 3.7% of the allegations. It was noted that in 45 or 7.6% of the cases, there was an allegation of improper use of the baton. These allegations included physical assault or improper threatening use of the baton. In 21 or 3.5% of the cases, complainants alleged improper handling of police firearms.

The Commissioner, given the diverse ethnic and racial composition of Metropolitan Toronto, continues to be particularly concerned with any allegation of ethnic or racial bias by the police. In 25, or 4.2% of the complaints, there was some mention of a racial or ethnic statement being made. In a further 11, or 1.9% of the cases, a racial or ethnic statement was not alleged to have been made by the police, but the complainants stated that they perceived the treatment they received as racially or ethnically motivated.

In 8 or 1.4% of the cases there was some reference to a disparaging statement regarding homosexuality.

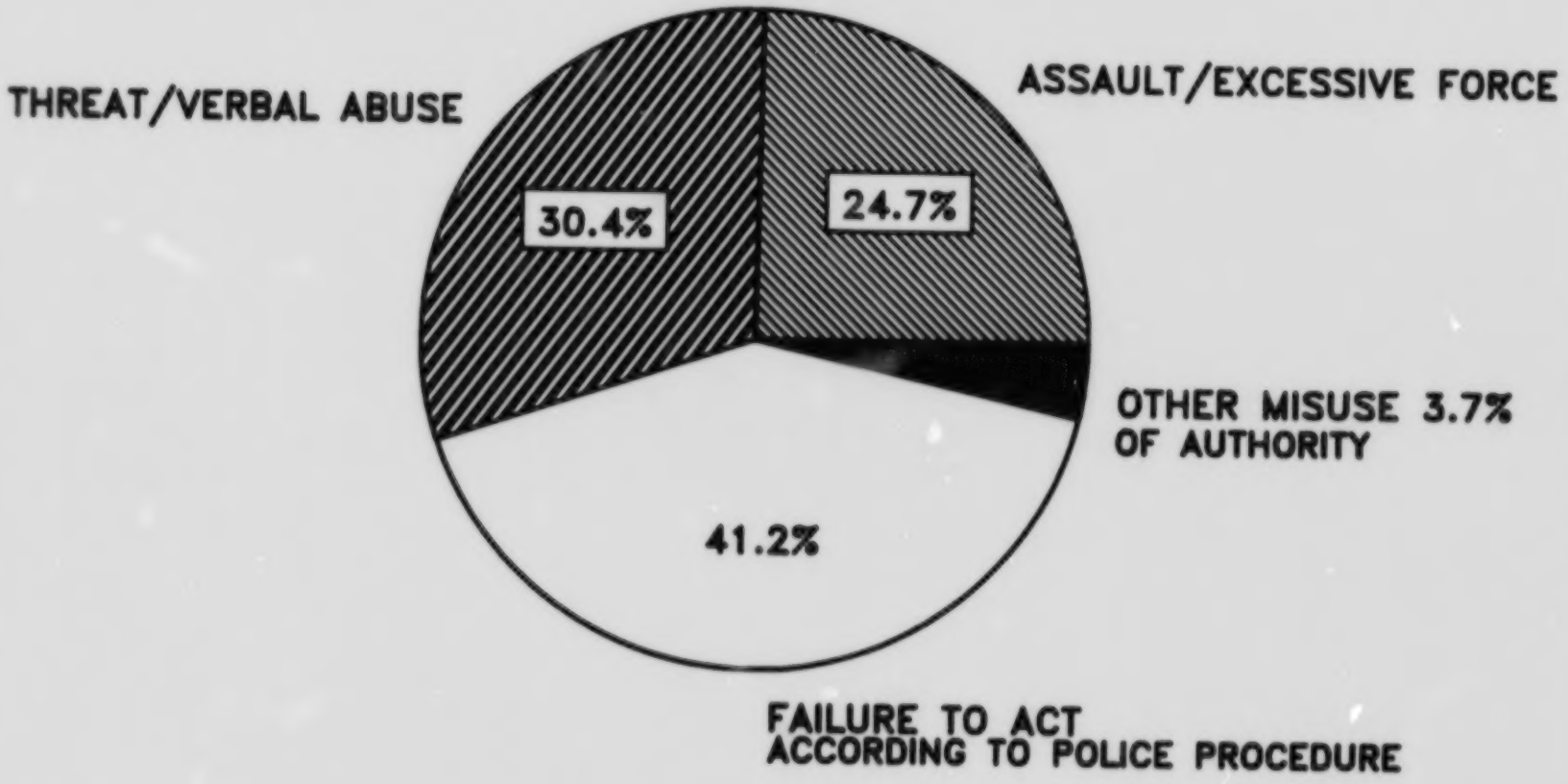
TABLE 2

TYPE OF ALLEGATION

(No. of Cases = 594)

Physical Assault/Excessive Force	Number	% of Allegations	% of Cases
Assault	88	7.2	14.8
Assault with Injury	173	14.1	29.1
Sexual Assault	1	0.1	0.2
Assault while Restrained	41	3.3	6.9
	303	(24.7)	
Threat or Verbal Abuse			
Incivility/Verbal Abuse	218	17.7	36.7
Harassment/Threat	134	10.9	22.6
Perceived Harassment/Threat	19	1.6	3.2
Verbal Sexual Harassment/Threat	3	0.2	0.5
	374	(30.4)	
Failure to Act According to Police Procedure			
General	164	13.4	27.6
Neglect of Duty	106	8.6	17.9
Damage/Mishandle Property	54	4.4	9.1
Failure to I.D. Self	47	3.8	7.9
Improper Arrest/Detention	30	2.4	5.1
Improper Search/Entry	50	4.1	8.4
Improper Charge	41	3.3	6.9
Improper Use of Discretion	14	1.2	2.4
	506	(41.2)	
Other Misuse of Authority			
Deceit	11	0.9	1.9
Breach of Confidence	4	0.3	0.7
Intoxication	8	0.7	1.4
Improper Driving	17	1.3	2.9
Theft/Corruption	1	0.1	0.2
Lying Under Oath	5	0.4	0.8
	46	(3.7)	
TOTAL	1,229	100.0	

Figure 2
TYPE OF ALLEGATION



In describing the allegations, the actual incident which led to the contact between the complainant and the police was noted. It must be remembered that this notation represents the first point of contact; others may have occurred as the situation evolved. The three most common points of contact were arrest (27.3%), traffic/accident investigation (24.4%), and criminal investigation (22.2%). The remaining incidents are listed in Table 3. In 238 or 40.1% of the cases, no charges were laid. The complainant was charged by the police in 348 or 58.6% of the cases. The details are presented in Table 4. In 97.7% of these cases, the charge was laid prior to the complaint being filed.

TABLE 3

Precipitating Factor	Number	Percent
At Arrest	162	27.3
Traffic/Accident Investigation	145	24.4
Criminal Investigation	132	22.2
Domestic Incident	36	6.1
Parking	27	4.6
By-Laws	15	2.5
Landlord/Tenant Issues	2	0.3
Request for I.D.	8	1.3
Other	14	2.4
None Apparent	53	8.9
TOTAL	594	100.0

TABLE 4

Charge Against Complainant	Number	Percent
Highway Traffic Act	163	28.3
Obstruct/Assault Police	69	12.0
Assault	68	11.8
Theft/Possession of Stolen Goods	42	7.3
Cause a Disturbance/Breach of Peace	26	4.5
Drug Offence	24	4.2
Alcohol Related Driving Offence	23	4.0
Property Offence	21	3.7
Break & Enter and Related Offences	21	3.7
Liquor Offence	15	2.6
Municipal By-Laws	13	2.3
Weapons Offence	12	2.1
Criminal Driving Offence	12	2.1
Public Order	11	1.9
Robbery/Serious Violence	11	1.9
Escape/Breach Probation	10	1.7
Public Mischief	3	0.5
Other	22	3.8
Unknown	9	1.6
TOTAL	575	100.0

There were 211 complainants (35.5%) who alleged some sort of physical injury occurring as a result of a confrontation with police. Of these, 70 (33.2%) alleged more than one injury. The details of these 281 alleged injuries are presented in Table 5. Of the alleged injuries, 57.3% involved cuts and bruises.

On the basis of the description in the allegations, medical reports and photographs, our researcher made a subjective evaluation of injuries. The criteria used by the researcher were as follows:

MINOR INJURIES: require little or no medical attention, such as scratches, minor headaches, etc.;

MODERATE INJURIES: have visible or identifiable signs, such as cuts, bruises, etc.; and

SERIOUS INJURIES: such as fractures, teeth injuries, cuts deep enough to require stitches.

TABLE 5

Alleged Injuries to Complainant	Number	Percent
Cuts/Bruises	161	57.3
Internal	49	17.4
From Handcuffs	54	19.2
Fractures	4	1.4
Teeth	8	2.9
Groin	4	1.4
Other	1	0.4
TOTAL	281	100.0

Of the 211 complainants who alleged injuries, 64 (30.3%) of the injuries were classified as minor, 76 (36.0%) were seen as being moderate, and 22 (10.4%) were serious. In 23.3% of the cases, there was insufficient information to determine the severity of injury. Of the complainants who claimed injuries, 111 (52.6%) sought medical attention or treatment of their injuries.

2. Characteristics of Complainants

In 81.3% of the cases, the complainants were male. Information as to age was given by 348 complainants. Of these, 105 (30.2%) were 25 years old or younger, 204 (58.6%) were in the 26 to 45 year age range. The remaining 39 complainants (11.2%) were over 45 years old.

3. Characteristics of Officers

Most allegations (90.7%) involved fewer than five officers. Specific data were collected on the first four officers listed in each complaint. The rank of these officers is shown in Table 6. Over two thirds (71.4%) of

the officers cited in the complaint were constables in the First Class category (usually, an officer must have served at least four years before gaining First Class status). Over 80% of the officers had five or more years experience on the police force (Table 7).

4. Police Division in which Complaint Arose

The police divisions in which the alleged incidents occurred are listed in Table 8. The largest number of complaints occurred in 52 Division (103, 17.3%). This division is responsible for the downtown core of Toronto. The next highest number of complaints (75, 12.6%) arose in 14 Division which is immediately west of 52 Division.

TABLE 6

Rank of Police Officer

	No.	%
Inspector or higher	5	0.5
Staff Sergeant	26	2.7
Sergeant	106	11.0
Constable 1	690	71.4
Constable 2	27	2.8
Constable 3	35	3.6
Constable 4	49	5.1
Not Specified	29	2.9
TOTAL	967	100.0

TABLE 7

Years of Service	Number	Percent	
Under 1 Year	32	3.3	
1 to 2	50	5.2	
3 to 4	45	4.7	
5 to 10	261	27.0	
11 to 15	344	35.6	
16 to 20	118	12.2	83.9
Over 20 Years	88	9.1	
Not Specified	29	2.9	
TOTAL	967	100.0	

TABLE 8

Division of Occurrence	Number	Percent
11	23	3.9
12	18	3.0
13	31	5.2
14	75	12.6
21	20	3.4
22	12	2.0
23	16	2.7
31	22	3.7
32	34	5.7
33	18	3.0
41	37	6.2
42	21	3.5
43	12	2.0
51	42	7.1
52	103	17.3
53	18	3.0
54	21	3.5
55	38	6.4
C.T.U.	8	1.4
E.T.U.	8	1.4
W.T.U.	1	0.2
Other	5	0.9
Unknown	11	1.9
TOTAL	594	100.0

5. Complaint Process Data

(a) Filing a Complaint

Members of the public can register a complaint about police actions at any police station, at the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force, or at the Office of the Public Complaints Commissioner at 157 Bloor Street West. Complaints were registered at the Office of the Public Complaints Commissioner in 41.8% of the cases, at a police station in 38.3% of the cases, and at the Public Complaints Investigation Bureau in 15.3% of the cases. The remainder of the complaints were initiated elsewhere and are presented in Table 9 (see also Figure 3). More than one third (37.9%) of the complaints were filed either the day of the alleged incident or on the next day. Most complaints (83.0%) were filed within a month of the occurrence (Table 10).

(b) Complaint Investigation

Most complaints are initially investigated by the Public Complaints Investigation Bureau of the Metropolitan

Toronto Police Force. That Bureau is headed by a Staff Inspector and staffed by Staff Sergeants and Sergeants who are charged solely with the responsibility of investigating public complaints. The Public Complaints Commissioner has a statutory duty to monitor this initial investigation. On occasion, the Commissioner may undertake the initial investigation of a complaint or take over an investigation begun by the Public Complaints Investigation Bureau.

TABLE 9

Location Complaint Filed	Number	Percent
Office of the Public Complaints Commissioner	248	41.8
Police Station	228	38.3
P.C.I.B.	91	15.3
Chief of Police	17	2.9
Police Commission	7	1.2
Other	3	0.5
TOTAL	594	100.0

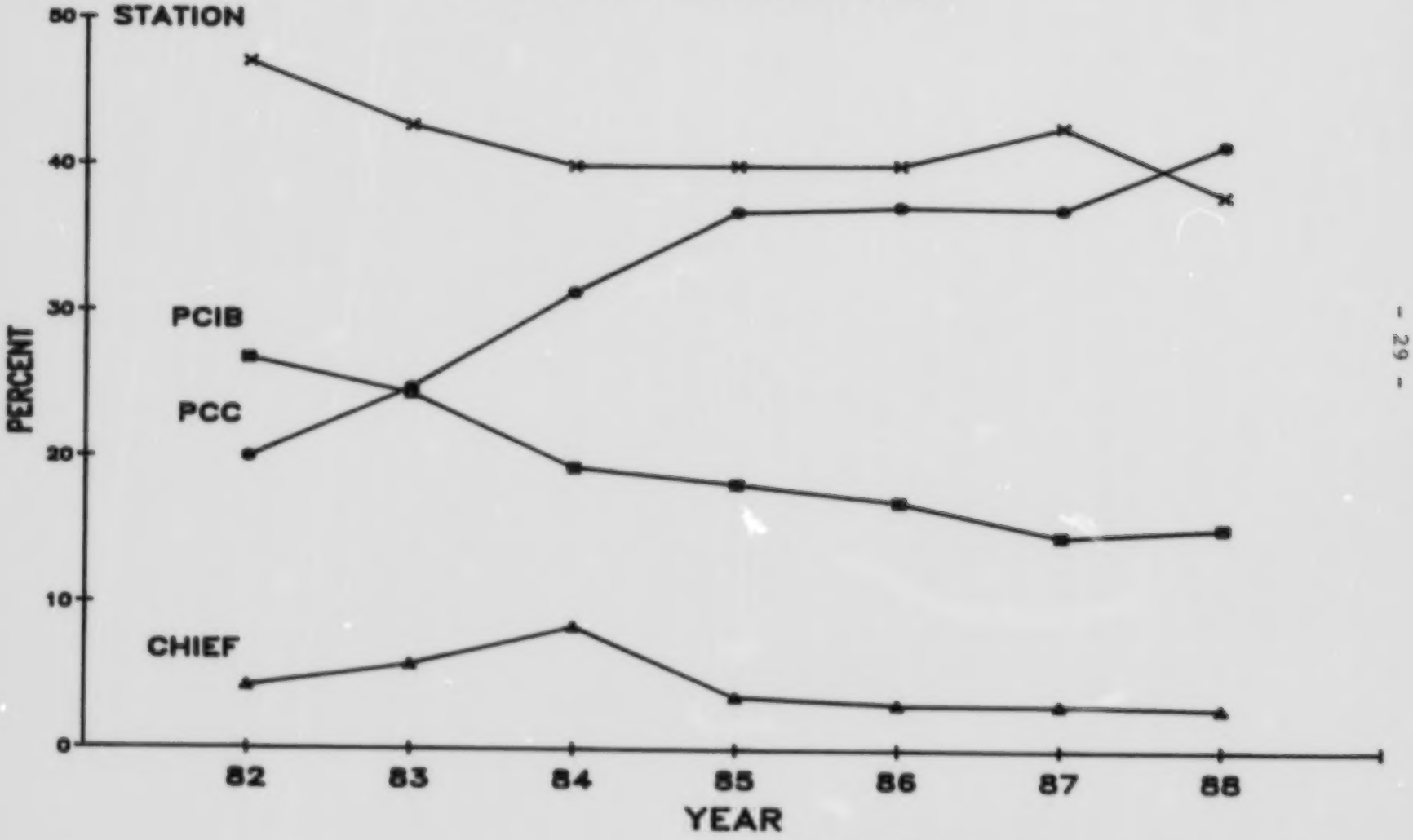
TABLE 10

Days: Occurrence to Filing	Number	Percent
Same Day	135	22.7
Next Day	90	15.2
2 - 31 Days	268	45.1
32 - 60 Days	33	5.6
61 - 90 Days	20	3.4
Over 90 Days	44	7.4
Unspecified	4	0.6
TOTAL	594	100.0

FIGURE 3

LOCATION WHERE COMPLAINT FILED

PERCENT DISTRIBUTION



ONLY MOST FREQUENT LOCATIONS PLOTTED

The civilian staff of the Office of the Public Complaints Commissioner can conduct the initial investigation of a complaint in three circumstances. They are: upon request by the Chief of Police; when there is unreasonable delay or other exceptional circumstances in the conduct of the investigation; or after receipt of the first interim report from the Public Complaints Investigation Bureau. The Office of the Public Complaints Commissioner carried out 20 initial investigations in 1988.

Whether an investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, the initial decision as to whether discipline is warranted is made by the Chief of Police after the investigation is completed.

(c) Informal Resolutions

In 21 cases, complaints were resolved informally. A complaint is properly resolved informally if both the complainant and subject officer(s) agree in writing to the resolution. The reasons given for the informal resolution are presented in Table 11. In 12 cases the informal

resolution was effected when the officer either admitted, apologized or explained his/her actions to the satisfaction of the complainant. In a further 6 cases the reason given was that the complainant was content to make the force aware of the incident.

In 3 cases, informal resolutions were coupled with disciplinary action. Officers were advised or spoken to by their superiors in 2 cases, and one case resulted in the officer being counselled.

(d) Withdrawals

In 200 cases, the complaints were withdrawn by the complainant. This amounted to 33.7% of all cases closed in 1988. Legal advice was cited by 43 complainants as the reason for withdrawing their complaints. Another 37 complainants who withdrew their complaints stated that it was their desire merely to call attention to the incident or put it on record rather than follow through with an investigation. Twenty three of these withdrawals were attributed to an admission of error on the part of the

complainant. The error was usually explained by the complainant having been intoxicated at the time of the incident so that a clear recollection of the events was impossible. In a further 19 cases, the reasons for withdrawal were not stated. Thirteen complainants reported personal reasons for withdrawing their complaints. Another 12 withdrew their complaints stating that all their concerns or allegations had been dealt with in court. The remaining 53 cases were withdrawn for miscellaneous reasons. The full list of reasons for withdrawals is presented in Table 12.

The fact that one third of all complainants in 1988 withdrew their complaints is of concern. This office will continue to monitor all withdrawals and make inquiries of complainants as to the reason for their withdrawals to ensure that such withdrawals are not the result of misunderstanding, threats or other improper pressure.

TABLE 11

Analysis of Informal Resolutions	Number	Percent
Officer admitted allegation, apologized or explained actions	12	57.1
Complainant content to make police force aware of complaint	6	28.6
Officer advised/spoken to by superiors	2	9.5
Officer counselled	1	4.8
TOTAL	21	100.0

TABLE 12

Reasons for Withdrawal	Number	Percent
Legal advice	43	21.5
Complainant wanted to draw attention to incident	37	18.5
Complainant admits error	23	11.5
Personal reasons	13	6.5
Concerns dealt with in court	12	6.0
Other	53	26.5
Not stated	19	9.5
TOTAL	200	100.0

(e) Decisions by the Chief of Police

In 373 complaints (62.8% of files closed in 1988) which were neither withdrawn nor informally resolved, investigation by either the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner was undertaken. Throughout the investigation, investigative reports are sent every 30 days to all interested parties including the complainant, the subject officer, and the Office of the Public Complaints Commissioner. Whether the investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, upon completion, the file is presented to the Chief of Police or his designate for a decision.

In most of these cases (92.7%), the Chief concluded that no further action was warranted. In 194 of these cases, the Chief stated that there was insufficient evidence to prove misconduct beyond a reasonable doubt. In 41 of these cases, the Chief noted that the officer acted according to police procedure. In 31 of these cases, the Chief concluded that the evidence supported the officer's version of events. In one case, the Chief offered an

apology but no further action was taken. In 85 (22.8%) of the 373 cases, the Chief concluded that the complaint would not be dealt with under the Act. In 63 of these cases, the Chief decided the complaints were frivolous, vexatious or made in bad faith. In the remaining 22 cases, the Chief decided the complaint was not within the jurisdiction of the Act.

In a total of 24 cases, some discipline of the accused officer(s) was imposed. Three of these cases involved informal resolution, whereas 21 were formal decisions made after full investigation. See Table 13 for a complete breakdown of discipline imposed by the Chief. Discipline choices available to the Chief of Police in these circumstances are as follows:

Officer Advised/Spoken To: Without making a judgment as to whether there is substance to the allegation, a superior officer informally discusses the case with the subject officer and suggests better ways of dealing with the situation.

Counsel: A superior officer acknowledges that there is substance to the allegation, but that the conduct was judged to be unintentional or resulted from inexperience. A counsel is recorded on the police officer's file at headquarters.

Caution: As above for Counsel. In addition, the officer is warned that further misconduct will result in charges pursuant to the Police Act.

Charge Under Police Act: The Chief of Police may charge the officer under the Police Act. In these cases, an internal disciplinary tribunal is convened. Misconduct must be proved beyond a reasonable doubt. Employment penalties can be imposed.

Board of Inquiry: The Chief of Police may refer the case to a public hearing before a civilian board of inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984. Misconduct must be proved beyond a reasonable doubt and employment penalties can be imposed.

Charge Under Criminal Code: The Chief of Police may cause the subject officers to be charged under the Criminal Code.

TABLE 13

Discipline Taken Against Police Officers

Nature of Resolution

Action	Informal	Formal	Total
Officer Spoken to/Advised	2	2	4
Counsel	1	9	10
Caution	-	1	1
Counsel and Caution	-	3	3
Police Act Charge	-	3	3
Referred to Board	-	1	1
Criminal Charge	-	2	2
TOTAL	3	21	24

Of the 21 cases in which discipline was imposed after full investigation, the Chief counselled the officer in 9 cases, cautioned the officer in one case, and cautioned and counselled in 3 cases. In 2 cases the officer was advised or spoken to. In one case the Chief of Police called a Board of Inquiry. Pursuant to the Chief's decision to charge officers under the Police Act, 3 disciplinary trials were completed in 1988. In one case the charge against the officer was dismissed. In one case the hearing was withdrawn and the unit commander imposed forfeiture of 8 hours off. The third case resulted in the officer being forced to resign or be dismissed.

In all, 12 criminal charges against police officers were disposed of in 1988. Two charges were laid by the Chief of Police and 10 by complainants. In 8 cases the charges were dismissed, in 3 cases the charges were withdrawn, and in one case the officer was found guilty.

(f) Summary of Disposition of Complaints

Of the 594 complaints resolved in 1988, the following dispositions took place:

WITHDRAWALS - 200

INFORMAL RESOLUTIONS - 21

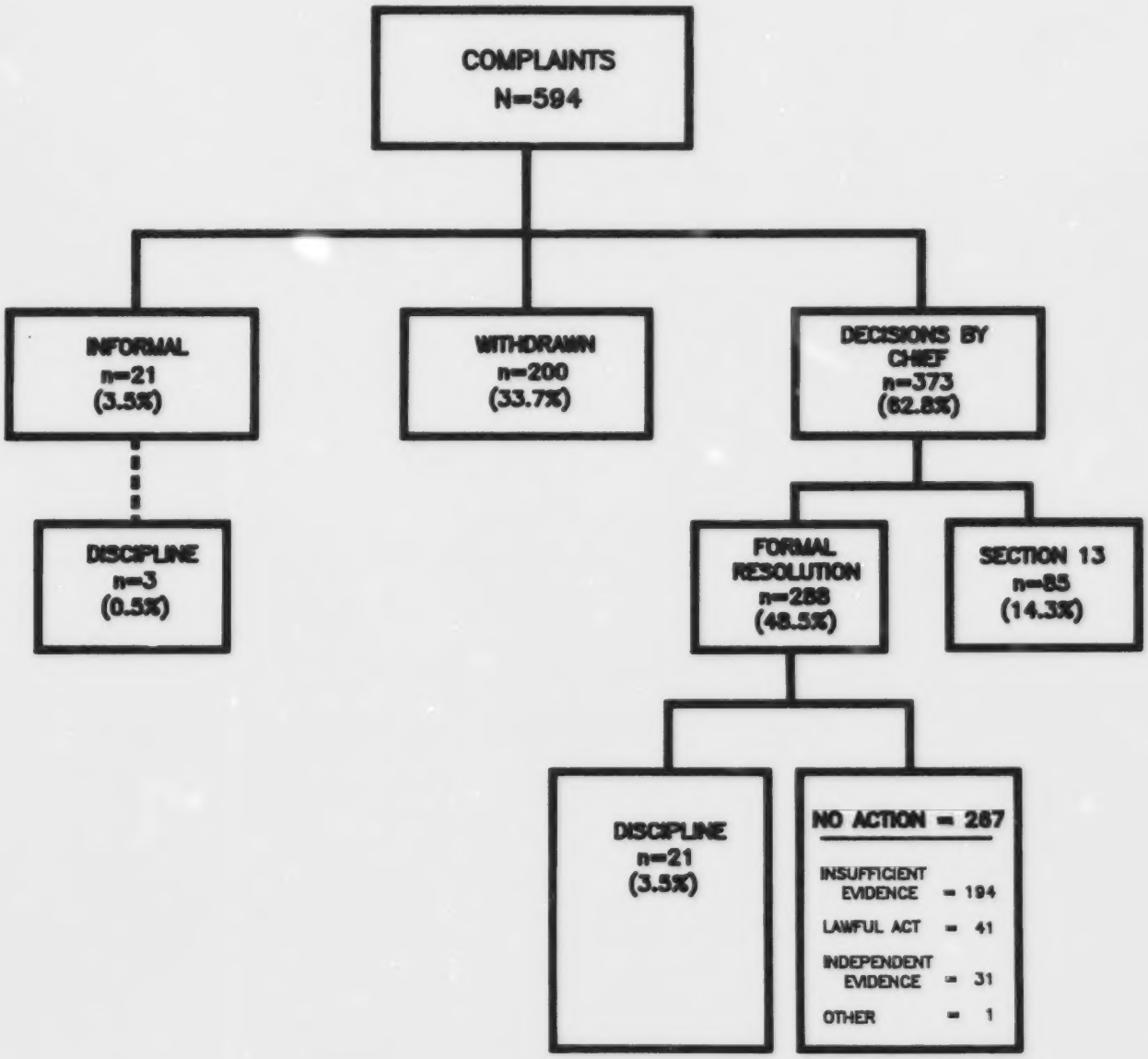
DECISIONS BY CHIEF - 373

(See Figure 4).

An analysis was made comparing the type of allegation with the nature of the complaint resolution (Table 14). The major difference found was that the complaints which were resolved informally were less likely to involve an allegation of assault. There were no other noteworthy differences.

FIGURE 4

INITIAL DISPOSITION OF COMPLAINTS



Note: The percentages are relative to the TOTAL number of complaints

Table 14
COMPLAINT RESOLUTION BY TYPE OF ALLEGATION

ALLEGATION	INFORMAL		WITHDRAWN		FORMAL		SECTION 13		TOTAL	
	n	%	n	%	n	%	n	%	n	%
Assault/ Excessive force	4	12.5	127	33.4	143	21.6	29	18.7	303	24.7
Threat, Verbal Abuse	12	37.5	105	27.6	223	33.7	34	21.9	374	30.4
Failure to act according to police procedure	14	43.8	136	35.8	270	40.8	86	55.5	506	41.2
Other Misuse of Authority	2	6.3	12	3.2	26	3.9	6	3.9	46	3.7
TOTAL NUMBER OF ALLEGATIONS	32	100.1	380	100.0	662	100.0	155	100.0	1,229	100.0
AVERAGE ALLEGATIONS PER COMPLAINT	1.5		1.8		2.3		1.8		2.1	

6. Reviews by the Public Complaints Commissioner

If the complainant is dissatisfied with the decision of the Chief of Police, including a decision that the complaint is frivolous or not within the jurisdiction of the Act, he or she has a right to request a review by the Office of the Public Complaints Commissioner. The Commissioner, however, has no jurisdiction under the legislation to initiate a review. Of the 85 cases in which the Chief decided the complaint was frivolous, vexatious or the complaint was not within the jurisdiction of the Act, 24 complainants requested a review of that decision. In all but 2 of these cases the Commissioner found that, although the evidence may have been insufficient to take disciplinary action, the allegations nonetheless fell within the jurisdiction of the Act.

In 1988, 122 reviews requested by complainants were completed. In 93 cases in which a review was completed, the Commissioner agreed in full or in part with the decision of the Chief. In 8 cases, the Commissioner decided that it was not in the public interest to order a hearing into the complaint. In 13 cases, the person who

had requested a review withdrew the complaint before the review was completed. In 6 cases, the Commissioner arranged an informal resolution of the complaint. The remaining 2 cases resulted in Boards of Inquiry being completed. In all, 6 Boards of Inquiry were called in 1988 and one officer appealed a Police Act decision. (A section on Boards of Inquiry is included further on in this Report).

7. Length of Time Taken to Resolve Complaints

A record was kept of the time it took to resolve each complaint.

The number of days between the time the complaint was filed and a decision by the Chief of Police averaged 190.3. A representation of the number of days between filing and the final investigative report is presented in Table 15.

The number of days between a request for review by the complainant and a decision by the Public Complaints Commissioner averaged 171.5. Table 16 sets out these figures.

TABLE 15

Number of Days From Filing to Final Report	Number	Percent
1 - 30 Days	71	12.0
31 - 60 Days	61	10.3
61 - 90 Days	63	10.6
91 - 120 Days	77	13.0
121 - 150 Days	53	8.9
151 - 180 Days	47	7.9
181 - 270 Days	86	14.5
271 - 360 Days	30	5.0
Over 360 Days	30	5.0
Not Specified	76	12.8
TOTAL	594	100.0

TABLE 16

Number of Days From Review Request to P.C.C. Decision	Number	Percent
1 - 30 Days	2	1.6
31 - 60 Days	11	9.0
61 - 90 Days	17	13.9
91 - 120 Days	19	15.6
121 - 150 Days	13	10.7
151 - 180 Days	11	9.0
181 - 270 Days	26	21.3
271 - 360 Days	15	12.3
Over 360 Days	8	6.6
TOTAL	122	100.0

8. Work-load of the Office of the Public Complaints Commissioner

Data has been collected on the operations of the Office of the Public Complaints Commissioner since 1982. There are two major points of contact with the public. The first is upon receipt of the original complaint. The second is the reviewing of the police decision.

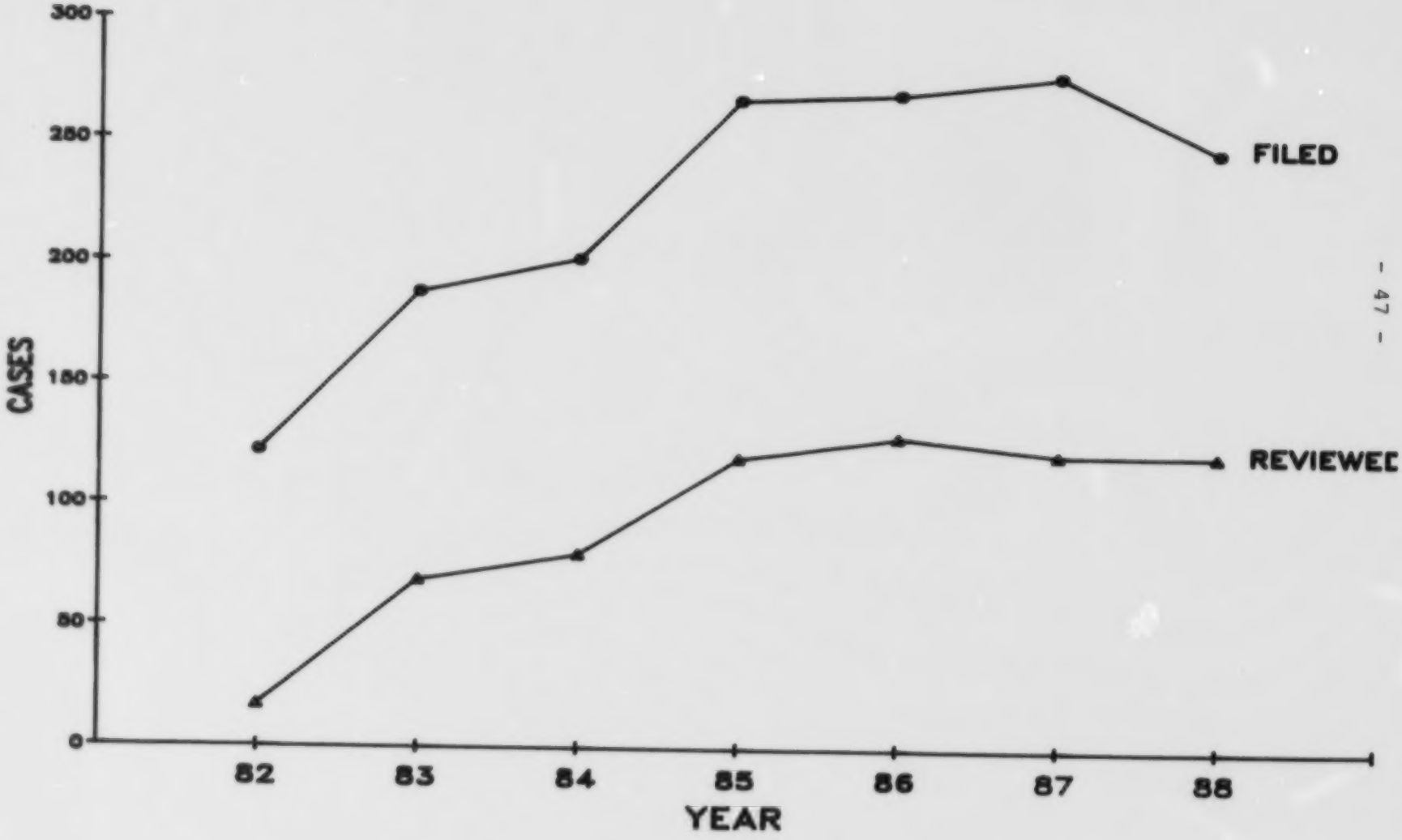
The number of complaints filed at the Office of the Public Complaints Commissioner has risen from 20% in 1982 to 41.8% in 1988. This increase is presented graphically in Figure 5. Requests for reviews have increased from 17 in 1982 to 122 in 1988.

As is apparent from the above figures, public demand for the services of the Office of the Public Complaints Commissioner has increased substantially since its inception.

FIGURE 5

WORKLOAD INDICATORS

PUBLIC COMPLAINTS COMMISSIONER



C. OTHER CONTACTS WITH THE OFFICE OF THE PUBLIC COMPLAINTS COMMISSIONER

During 1988, in addition to the complaints filed at the Office, there were 619 recorded contacts made with the Office of the Public Complaints Commissioner concerning inquiries which, although they did not develop into complaints, took a substantial amount of time to resolve.

Of these 619 contacts, 83.9% were made by telephone, 10.0% were made by letter, while 6.1% were personal appearances.

Of the 619 people who made inquiries of the Public Complaints Commissioner's Office during this period, 45 or 7.3% were referred by, among others, government agencies, lawyers, or city councillors.

In 60.4% of these contacts, people inquired about specific incidents and wished to know whether or not their complaint fell within the jurisdiction of the Office of the Public Complaints Commissioner. 7.4% of the contacts were requests for information about either the Office or the procedures set out in the legislation.

Another 15.1% made general complaints regarding the police or the justice system, 6.5% requested information about non-police matters, while 10.6% requested general information about the police without having a specific complaint. The majority of these contacts involved some form of follow-up activity; 129 additional telephone calls were made by investigators to aid in the resolution of these inquiries. Further, 60 letters were written for the same purpose and 38 interviews were conducted. In 43 cases, a subsequent follow-up appointment was made.

Aside from these contacts, a great many inquiries were made by people who wanted to lodge a complaint about a police officer on a police force other than the Metropolitan Toronto Police Force. These complaints are not within the jurisdiction of the Office of the Public Complaints Commissioner and were referred to the proper agencies.

Citizens were also referred to the Metropolitan Toronto Police Force, the Law Society of Upper Canada, the Municipal Police Authorities, Chiefs of Police in other jurisdictions, the Ministry of the Attorney General, other ministries and the Office of the Ombudsman.

PART III

Other Significant Activities

PART III - OTHER SIGNIFICANT ACTIVITIES

A. EDUCATION AND OUTREACH - POLICE AND PUBLIC

In 1988, the Public Complaints Commissioner continued regular appearances at the C.O. Bick Police College, for training sessions on the complaints legislation and its implications both for constables and for supervisory police officers. The Commissioner found these education sessions particularly useful in that they allowed for informal dialogue with members of all ranks of the police force. Since taking office in October 1985, the Commissioner has attended the C.O. Bick College for this purpose on 41 occasions.

Public education activities and consultations with the public continued throughout the year. Through meetings with individuals, community groups and social service agencies, the Office of the Public Complaints Commissioner undertook to improve public awareness of the Commissioner's role.

B. ON-GOING CONSULTATION WITH THE POLICE FORCE AND THE BOARD OF COMMISSIONERS OF POLICE

Complaints against the police by members of the public are of concern to police management at all levels. The Commissioner and his staff maintain on-going discussions with the Chief of Police, senior staff of the police force, the head of the Public Complaints Investigation Bureau, as well as members of the Board of Commissioners of Police.

An example of informal interaction between the Metropolitan Toronto police and the Office of the Public Complaints Commissioner is set out below.

In anticipation of the large number and variety of activities planned during the Economic Summit in June 1988, Metropolitan Toronto police management approached the Public Complaints Commissioner and requested his co-operation with respect to the processing of public complaints. As a result of this request, the Public Complaints Commissioner extended regular office hours to cover the three evenings of the Economic Summit.

C. RECOMMENDATIONS TO THE METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE

The Metropolitan Toronto Police Force Complaints Act, 1984, gives the Commissioner the power to make formal recommendations aimed at preventing situations which have given rise to complaints. Section 21 of the Act provides that the Commissioner may make recommendations to the Metropolitan Toronto Board of Commissioners of Police when the Commissioner is of the opinion that a police practice or procedure, or law affecting the resolution or prevention of complaints, should be altered or implemented. Because of the flexible nature of the Act it is often possible to achieve the goals envisioned in this section co-operatively with the police without formal recourse to the legislation. Examples of this co-operation are set out below.

1. The Public Complaints Commissioner was approached by a citizen who was concerned about the incorrect and misleading wording of a Metropolitan Toronto Police Force explanatory notice which is mailed along with subpoenas to witnesses. Representatives of the Public Complaints Commissioner met with members of the Operational Planning

Section of the Metropolitan Toronto Police Force and, as a result, the notice form was amended to rectify the error.

2. In response to a complaint concerning police policy and procedure during the investigation of motor vehicle accidents and subsequent court procedures, members of the Office of the Public Complaints Commissioner met with representatives of the Operational Planning Section of the Metropolitan Toronto Police Force.

This meeting included discussion of police procedures and practices relating to: the collection of all relevant information (including all witness statements) in police memo books; accident forms; and the communication of all information and evidence collected by the police regardless of which party it favours to the Crown Attorney for disposition.

The police have reviewed their policies and procedures relating to these issues and are currently in the process of instituting substantial changes.

3. The Metropolitan Toronto Police use of the A.L.E.R.T. screening device at accident scenes was raised in another complaint. The current procedure directs police officers not to use this screening device in an accident scene investigation. The necessity and appropriateness of such a prohibition was raised in discussions between representatives of the police force, the Crown Attorney's Office and the Office of the Public Complaints Commissioner. Further discussions regarding possible amendments to this procedure are ongoing.

D. LIAISON WITH THE ONTARIO PROVINCIAL POLICE

Section 18 of the Act provides that the Chief of Police may request the Commissioner to conduct the initial investigation of a complaint.

The Chief made such a request on three occasions in 1988 in circumstances in which it was essential that the investigation be clearly seen to be independent and separate from his Force.

In each case the Office of the Public Complaints Commissioner completed investigations and forwarded the result to the Chief for a decision.

Following such a decision, the complainant can request that the Public Complaints Commissioner review the matter in the normal manner.

In one case, as has happened in previous years, concurrent with his request that the Office of the Public Complaints Commissioner conduct the initial investigation, the Chief also referred the matter to the Ontario Provincial Police for criminal investigation. In these instances, with the co-operation of the provincial force, the Office of the Public Complaints Commissioner monitors the Ontario Provincial Police investigation and includes the Ontario Provincial Police file with the investigative report it sends to the Chief for his decision.

E. PARTICIPATION IN POLICE/COMMUNITY DIALOGUE

Part of the mandate of the Office of the Public Complaints Commissioner is to try to prevent, or avoid the escalation of, situations of misunderstanding or hostility between the police and the community. In furtherance of this objective, the Public Complaints Commissioner's staff have been involved with a variety of groups created to deal with issues currently confronting the Metropolitan Toronto

Police Force and the communities of Toronto and surrounding areas. The examples below represent the involvement of the Office of the Public Complaints Commissioner in issues which affect local neighbourhoods, Metropolitan Toronto as a whole, and adjoining regions.

1. Council on Race Relations and Policing

The Council on Race Relations and Policing is a partnership between the Metropolitan Toronto Police Force and representatives of institutions, community agencies and individuals with an interest in issues pertaining to race relations and policing. The organization was originally established in 1976 and its mandate includes bringing the above-noted groups and individuals together to discuss issues of mutual concern. It also aims to provide advisory assistance to other committees on race relations and policing by developing programs and strategies for joint problem-solving with the police force, developing public education programs and documenting and analyzing trends and experiences in the police/race relations field. The Office of the Public Complaints Commissioner has been represented on the Council since 1982 and is an active participant in subcommittee work.

During 1988, police challenges to the Metropolitan Toronto Police Force Complaints Act, 1984 became a matter of concern for various community groups and citizens. In response, the Council invited the President of the Metropolitan Toronto Police Association, the Public Complaints Commissioner, the Chief of Police (Metropolitan Toronto) and the Chair of the Metropolitan Toronto Board of Commissioners of Police to present their views and recommendations regarding the complaints legislation. Following these presentations, the Council appointed a subcommittee which prepared a submission to the Attorney General in October 1988, regarding the legislation.

The Office of the Public Complaints Commissioner continues to participate in the Council's Advisory Subcommittee on Police Training. The mandate of the subcommittee includes: serving as an information-sharing forum for institutions and organizations assisting the Police College; cooperatively developing educational materials with an emphasis on cross-cultural, race relations and human rights issues; providing feedback on the Force's proposed training plans and materials; and serving as a vehicle for monitoring and evaluating the impact of training activities.

The Subcommittee will continue its efforts to assist the Force in implementing the goals, objectives and strategies set out in the Draft Report on Cross-Cultural and Race Relations Training which was endorsed by the Chief of Police and the Metropolitan Toronto Board of Commissioners of Police in January, 1988.

2. The Greater Toronto Region Working Group on Policing in Multicultural, Multiracial Urban Communities

The Greater Toronto Region Working Group (the Working Group) was formed in 1984 to address policing issues arising out of the increasing plurality of our society. The Working Group is composed of representatives from the police forces of Hamilton-Wentworth, Durham Region, Halton Region, Metropolitan Toronto, Peel Region and York Region, as well as the Ontario Provincial Police, the Royal Canadian Mounted Police, representatives of various committees and levels of government and individuals with expertise in the areas of race and ethnic relations and cross-cultural communication. The purpose of the Working Group is to develop detailed plans of action by which police and the community can achieve more representative police forces, enhance cross-cultural training for police

officers, improve citizen complaint procedures, and improve and coordinate police/community liaison activities. The Office of the Public Complaints Commissioner has been represented on the Working Group since its inception.

During 1988, the Working Group completed and published its Guidelines for Police/Minority Community Relations and Liaison, which was presented to the Attorney General and to the Solicitor General of Ontario. The Report has been widely distributed to community groups and to police forces.

The Working Group's Intercultural and Race Relations Training Project subcommittee began its work in the latter part of 1988. The subcommittee anticipates producing its Report and Guidelines in 1989.

3. Toronto Mayor's Committee on Community and Race Relations Subcommittee on Policing

The Toronto Mayor's Committee on Community and Race Relations was established in 1981 by the Council of the City of Toronto to promote understanding and respect among racial, cultural, ethnic and religious groups in Toronto.

In August, 1988 the Committee revived its policing subcommittee in order to address deteriorating relations between the police and Toronto's visible minorities.

A member of the Public Complaints Commissioner's staff is participating in this group's efforts as a resource person.

4. Intergovernmental Race Relations Network

The Intergovernmental Race Relations Network, which was established in June of 1988, is a committee composed of race relations professionals which meets on a regular basis to share information and to develop appropriate strategies and procedures to address emerging race related issues.

A member of the Public Complaints Commissioner's staff participates in the activities of this group.

F. THE RACE RELATIONS AND POLICING TASK FORCE

In December of 1988, Solicitor General Joan Smith announced the establishment of a Task Force "to address promptly the very serious concerns of visible minorities respecting the interaction of the police community with their own."

The Public Complaints Commissioner was named as Chair of the Task Force. The remaining five Task Force members, representative of both the police community and the visible minority population in Ontario, were:

Dr. Ralph Agard, President of the Children's Aid Society of Metropolitan Toronto and Executive Director of Harambee Services Canada Ltd.

Kamala-Jean Gopie, Consultant: Equity in the Curriculum for the North York Board of Education and President of the Urban Alliance on Race Relations.

James Harding, Chief of the Halton Regional Police Force and President of the Ontario Association of Chiefs of Police.

T. Sher Singh, Barrister and immediate past Chair of the Council on Race Relations and Policing.

Roy Williams, President of the Jamaican Canadian Association and member of the Metropolitan Toronto Board of Commissioners of Police.

The mandate of the Task Force was to inquire into and report on various aspects of police interaction with the visible minority community, including: the training police officers receive with respect to both visible minorities and the use of force; police hiring and promotional practices; police/visible minority community liaison mechanisms; and the feasibility of establishing a monitoring system to regularly review the interaction between these two groups.

The Task Force, which set up headquarters in the offices of the Public Complaints Commissioner, sought detailed information from Ontario's 121 police forces by means of a questionnaire on issues of relevance. The response was outstanding: 99 questionnaires were completed and returned. An added 127 written submissions were received from police forces, community organizations, associations and individuals. The Task Force also held public hearings in Toronto, Ottawa, Windsor and Thunder Bay at which 110 presenters made oral submissions.

The Task Force Report was delivered to the Solicitor General and released to the public on April 11, 1989.

G. THE INTERNATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT (IACOLE)

The International Association for Civilian Oversight of Law Enforcement, of which the Public Complaints Commissioner is President, was established in 1985. It provides an international exchange forum for those who work directly in civilian oversight of law enforcement or who are interested in the subject. The intent of the exchange is to encourage and strengthen government agencies charged with the responsibility of examining and commenting upon citizen complaints of police misconduct.

An arena for discussion and debate has been international conferences which have been attended by civilian oversight practitioners, police executives, elected government representatives, police association officials, government administrators, civil rights/civil liberties advocates, lawyers and criminal justice educators from around the world. Representatives of civilian oversight agencies from Australia, Bermuda, Canada, England, Ireland, the Netherlands, Nigeria, Northern Ireland, Sweden and the United States of America have attended IACOLE conferences.

IACOLE has created a Clearinghouse of published materials about civilian oversight of law enforcement. A catalogue separates the materials into general categories and lists each publication with the title, author, publisher, a brief synopsis and where the publication can be obtained. The Association has printed the proceedings of its conferences and a booklet of selected conference speeches which are available through the Clearinghouse.

A Newsletter, which periodically publishes and highlights IACOLE activities, is a means of communication for civilian oversight agencies and reports on recent developments in the field, such as the establishment of a new oversight agency or changes in established agencies.

Membership in the Association is divided into two categories: members and associate members. Members are defined as "persons who are not sworn law enforcement officers and who work for or constitute agencies which are established by legislative authority to investigate and/or review complaints against law enforcement." Members are eligible to vote at Association meetings and to serve as

officers. Associate Members are defined as "persons interested in the oversight of law enforcement." Associate members are permitted to participate in all Association activities except voting or serving as officers.

The Public Complaints Commissioner has served on the Board of Directors of IACOLE as a member at large and Vice President since 1985. In 1987 he was appointed President, an office he currently holds. In that capacity he presided over the Association's Fourth Annual Conference in Montreal in September, 1988 at which the theme was "Civil Liberties". Participants spoke on subjects such as the effects of civilian oversight on police; citizen and community concerns about police accountability; and who should properly investigate police complaints.

The Commissioner is currently involved in organizing the Fifth Annual Conference to be held in Oakland, California in September, 1989.

PART IV

Boards of Inquiry

PART IV - BOARDS OF INQUIRY AND JUDICIAL REVIEW

A. INTRODUCTION

Both the Public Complaints Commissioner and the Chief of Police can decide to send a complaint to a Board of Inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984, [s. 19(3), s. 14(1)(b)] if they consider that the public interest warrants such a hearing. In addition, any police officer who wishes to appeal from an adverse decision of an internal police disciplinary tribunal arising from a public complaint can appeal to a Board of Inquiry under the complaints legislation.

The individuals who form Boards of Inquiry to hear and decide upon complaints are selected from a panel appointed by the Lieutenant Governor in Council. One-third of the members of this panel are recommended for appointment jointly by the Attorney General and the Solicitor General; one-third of the members are recommended for appointment by Metro Council; and the remaining one-third are recommended jointly by the Metropolitan

Toronto Board of Commissioners of Police and the Metropolitan Toronto Police Association. The Attorney General/Solicitor General appointees must be members of the Law Society of Upper Canada. These lawyers chair each Board hearing.

A Board of Inquiry in respect of an allegation of serious misconduct is heard by three people, one from each group of appointees. A Board of Inquiry involving an allegation of minor misconduct is heard by one person, an appointee of the Solicitor General and Attorney General. The standard of proof in these proceedings requires that an allegation be proved beyond a reasonable doubt for there to be a finding of misconduct. Hearings are held in public and are procedurally similar to other administrative or quasi-judicial proceedings. The Statutory Powers Procedure Act and the rules of natural justice apply. There are additional provisions in the complaints legislation protecting the rights of police officers.

Between January 1, 1988 and December 31, 1988 a total of 6 complaints were referred to a Board of Inquiry. Within the reporting period, one hearing was informally resolved, and the remaining 5 were given hearing dates in

1989. One appeal from a Police Act disciplinary hearing was referred to a Board and will be heard in 1989.

Two Board of Inquiry decisions were delivered during 1988 as a result of Boards called in 1987. The Divisional Court heard two appeals from Board decisions, one application for judicial review and two procedural motions. As well, the Court of Appeal disposed of one appeal from a Divisional Court finding.

B. BOARD OF INQUIRY DECISIONS

1. Re: Federer and P.C. Stephens
   December 14 and 15, 1987
   Chair: Mr. W. Neils Ortved
   Hearing ordered by Chief of Police

Chair Ortved found the complaint against P.C. Stephens to be unsubstantiated. The substance of the complaint was that the officer used derogatory and insulting language towards the complainant while issuing him a parking ticket and thereby violated subsection 1(g)(iii) of the Code of Offences. The Chair found that a case of incivility was not established in the actual words that P.C. Stephens used, nor could a disrespectful attitude be proved beyond a reasonable doubt.

2. Re: Young and P.C. Arnold
September 14 and November 24, 1988
Chair: Mr. Derry Millar
Hearing ordered by Public Complaints Commissioner

Chair Millar substantiated the complaint lodged by Mr. Young against P.C. Arnold. Mr. Young had alleged that P.C. Arnold used insulting and profane language to him while ticketing him for provincial violations. This conduct was considered to have violated subsection 1(g)(iii) of the Code of Offences. Despite the language used, in light of P.C. Arnold's excellent record, the Chair accepted the recommendation of Crown Counsel and deemed a reprimand as appropriate.

C. DIVISIONAL COURT APPEALS

1. Re: Gojdos and P.C. Cooper
November 23, 1988
Court: Osler, Reid and Fitzpatrick JJ.

On November 23, 1988, the Divisional Court dismissed the above-noted appeal brought by P.C. Cooper without written reasons (Copy of Endorsement in Appendix A).

2. Re: Khoury and P.C. Pike
November 23, 1988
Court: Osler, Reid and Fitzpatrick JJ.

On November 23, 1988, the Divisional Court dismissed the above-noted appeal brought by P.C. Pike without written reasons (Copy of Endorsement in Appendix B).

D. JUDICIAL REVIEW

1. Ramsay v. The Chief of Police and the Board of Commissioners of Police
June 14, and 15, 1988
Court: Reid, Craig and Boland JJ.

In this case, an application was brought for judicial review requiring the Chief of Police, or his designate, to review the final investigation report and render a decision so that Mr. Ramsay's complaint could proceed. The Chief of Police had declined to render a decision on this complaint because the complainant had launched a civil action arising out of the same facts and that action remained outstanding. On September 30, 1988 Mr. Justice Reid of the Divisional Court delivered his decision requiring the Chief of Police to render a decision (Copy of Decision in Appendix C).

E. DIVISIONAL COURT MOTIONS

1. Re: Hendry and P.C. Vetere and P.C. Giancola
October 31, 1988
Court: Parker C.J.
and
November 21, 1988
Court: Reid J.

a) As mentioned in the 1987 Annual Report, P.C. Giancola successfully appealed a finding of misconduct by a Board of Inquiry which had been called by the Chief of Police. P.C. Vetere, who had not participated in most of the proceedings before the Board and who had not launched an appeal against the finding of misconduct on his part, launched a motion before Chief Justice Parker requesting an extension of time to file a Notice of Appeal. On October 31, 1988, the Court granted the motion extending the appeal time for five days.

b) As a result of the Notice of Appeal being filed, the order of the Board dismissing P.C. Vetere was stayed pursuant to Rule 63 of the Rules of Civil Procedure. The result of the stay was that P.C. Vetere would resume his duties as a police officer. On November 21, 1988, the Metropolitan Toronto Board of Commissioners of Police

brought a motion to have the stay lifted. The basis of their request was that they should not be forced to reinstate P.C. Vetere after this lengthy period of time especially as he had had a prior criminal conviction for another assault registered against him.

The application was dismissed by the Court, which held that the Board of Commissioners had failed to show that it had standing in this matter.

P.C. Vetere's appeal is pending.

F. COURT OF APPEAL DECISIONS

1. Re: Neely and P.C. Weller
   January 11, 1988
   Court: Associate Chief Justice Dubin; Zuber and Robins JJ.

On January 11, 1988, the Court of Appeal dismissed P.C. Weller's application for leave to appeal the decision of the Divisional Court upholding the finding of the Board of Inquiry requiring him to resign within seven days or be dismissed (Copy of Endorsement in Appendix D).

APPENDICES

APPENDIX A

Certificate of Official Document

D/C 942/85
FILE NO.

SUPREME COURT OF ONTARIO

This is to Certify that the annexed document, each page of which is stamped with the seal of the said Court as identifying the same, is a true copy of the endorsement of Honourable Mr. Justice Osler, the Honourable Mr. Justice Reid and the Honourable Mr. Justice Fitzpatrick, dated the 23rd day of November, 1988.

B E T W E E N :

POLICE CONSTABLE MICHAEL COOPER

Appellant

- and -

METROPOLITAN TORONTO POLICE COMPLAINTS BOARD
and PETER GOJDOS

Respondents

Given under my hand and seal of the said Court, at Toronto
this 28th day of November, 19 88,
being an officer duly authorized to give this certificate.

A.P. BRIDGES, REGISTRAR, DIVISIONAL COURT

Osler J.

IN THE SUPREME COURT OF ONTARIO 942/85

(Divisional Court)

B E T W E E N:

POLICE CONSTABLE MICHAEL COOPER,

Appellant,

- and -

METROPOLITAN TORONTO POLICE COMPLAINTS BOARD AND PETER GOJDOS,

Respondents.

APPEAL BOOK

Damien R. Frost
Barrister & Solicitor
99 Charles Street East
Toronto, Ontario
M4Y 1V2

(416) 923-1900

Counsel for the Appellant.

THE SUPREME COURT OF ONTARIO
FILED
JAN 28 1987
REGISTRAR S. C. O.
DIVISIONAL COURT OFFICE

DIVISIONAL COURT

BEFORE Mr. Justice Robins, Reid & Fitzpatrick

DATE Wednesday 23 November 1988

DISPOSITION OF APPEAL

We find no basis in law upon which we can set aside the findings of the Board & cannot therefore interfere with their disposition.

Appeal ~~dismissed~~ is dismissed. No costs.

23/11/88

J.

MINISTRY OF THE ATTORNEY GENERAL
RECEIVED
JAN 28 1987
CROWN LAW OFFICE - CRIMINAL

APPENDIX B

Certificate of Official Document

1222/85

FILE NO.

SUPREME COURT OF ONTARIO

This is to Certify that the annexed document, each page of which is stamped with the seal of the said Court as identifying the same, is a true copy of the endorsement of the Honourable Mr. Justice Osler, the Honourable Mr. Justice Reid and the Honourable Mr. Justice Fitzpatrick, dated the 23rd day of November, 1988.

B E T W E E N :

POLICE CONSTABLE RALPH PIKE

Appellant

- and -

METROPOLITAN TORONTO POLICE COMPLAINTS BOARD
and NASRI J.S. KHOURY

Complainant

Given under my hand and seal of the said Court, at Toronto
this 18th day of May, 1989
being an officer duly authorized to give this certificate.

ASSISTANT REGISTRAR/ DIVISIONAL COURT

Osler J. 1222/85
A39

IN THE SUPREME COURT OF ONTARIO
(DIVISIONAL COURT)

B E T W E E N:

POLICE CONSTABLE RALPH PIKE,

Appellant,

- and -

METROPOLITAN TORONTO POLICE COMPLAINTS BOARD
AND NASRI J.S. KHOURY,

Complainant.

APPEAL BOOK

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M4Y 1V2
(416) 923-1900

Solicitor for the Appellant.

FEB 26 1987
R.S.C.O.
COURT OFFICE

THE SUPREME
DIVISIONAL

DIVISIONAL COURT ~~Divisional Court~~

BEFORE ~~R.E. Fisher Osler~~ Reid & Fitzpatrick

DATE Wednesday 23 November 1988

DISPOSITION OF APPEAL

We can see no error in law in what was done by the Chairperson, or in her written reasons & the appeal must be dismissed. No costs asked for or given.

23/11/88

Service upon the Min of A.G.
is hereby admitted
J K Stewart
FEB. 20 1989

APPENDIX C

File No. 97/88

SUPREME COURT OF ONTARIO

DIVISIONAL COURT

REID, CRAIG AND BOLAND JJ.

IN THE MATTER OF the Metropolitan Toronto Police Force Complaints Act, 1984, S.O. 1984, c.63	
AND IN THE MATTER OF the Metropolitan Police Force Complaints Project Act, 1981, S.O. 1981, c.43	Peter I. Waldmann for the Applicant
AND IN THE MATTER OF the Police Act, R.S.O. 1980, c.381, as amended	John Swaigen for the Respondents
AND IN THE MATTER OF an Application under the Judicial Review Procedure Act, R.S.O. 1980, c.224	Leslie McIntosh for the Attorney General of Ontario, Intervenor
BETWEEN:	
DANA JOHN RAMSAY Applicant	
-and-	
THE CHIEF OF POLICE and THE METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE Respondents	Heard: June 14 and 15, 1988

REID J.

On this application for judicial review applicant Ramsay seeks an order requiring the Chief of Police for Metropolitan Toronto (Jack Marks) or his designate, to review the final investigation report on Ramsay's complaint and refer it to the respondent Board for a hearing.

The Attorney General intervenes by right pursuant to s.10(4) of the Judicial Review Procedure Act, R.S.O. c.224, which provides:

> Notice of an application for judicial review shall be served upon the Attorney General who is entitled as of right to be heard in person or by counsel on the application.

Ms. McIntosh informs us that the position she asserts on behalf of the Attorney General expresses the views of the Public Complaints Commissioner, Chairman of the Police Complaints Board appointed under the Metropolitan Police Complaints Project Act, S.O. 1981, c.43, (the Act). She supports the applicant's position.

The Events of 1984

The story begins in 1984 with an assault Ramsay alleges he suffered at the hands of three members of the Metropolitan Toronto Police Force at Exhibition Stadium in Toronto on August 26 of that year. On September 7, Ramsay laid a complaint against those police officers under the Act. It may be worth mentioning here that the Act was repealed and replaced by the Metropolitan Police Force Complaints Act, S.O. 1984, s.63, which came into force on 21 December, 1984, but it governs this application neverthless by virtue of s.34(2) of the latter, which provides

> 34(2) Notwithstanding subsection (1), the Metropolitan Police Force Complaints Project Act, 1981 shall continue in force and apply to a complaint that is made before the day this Act comes into force, for the purpose of continuing the proceedings in respect of that

> complaint, but the proceedings at any Board hearing commenced after the day this Act comes into force shall be in accordance with the provisions of this Act.

The provisions of the Act relevant to this application were repeated in the 1984 Act.

The launching of the complaint led to an internal investigation by the police force. About October 12, Ramsay's counsel received a copy of an interim report on the investigation prepared by Sergeant Steven Marrier. On October 15, Ramsay's counsel sent a letter to Sgt. Marrier describing in detail the circumstances from which the complaint stemmed. This led to a further interim report by Sgt. Marrier dated November 13.

The Events of 1985

We move into 1985. On February 21, Ramsay commenced an action for damages against the officers in the Supreme Court of Ontario. The Chief of Police was also made a defendant in that action pursuant to s.24 of the Police Act, R.S.O. 1980, c.381, as amended. Section 24 reads in part:

> 24(1) The chief of police is liable in respect of torts committed by members of the police force under his direction and ocntrol in the performance or purported performance of their duties in like manner as a master is liable in respect of torts committed by his servants in the course of their employment and shall in respect of any such torts be treated for all purposes as a joint tortfeasor.

On receipt of this report, Aubrey Golden Q.C. who, with Mr. Waldmann are counsel for Ramsay, wrote on June 6 to S. B. Linden Q.C., the Public Complaints Commissioner, to state that "Contrary to the statement contained in that report, Mr. Ramsay did not withdraw his complaint against the three officers and desires to vigorously pursue these complaints through your office." On June 10 Mr. Linden replied that he had "written to the Staff Inspector in charge of the Public Complaints Investigation Bureau, asking him to continue investigating this matter".

Nothing occurred until October 4 when counsel for Ramsay wrote to Mr. Linden to request expressly that he undertake his own investigation pursuant to s.14(3)(a) or (c) of the Act. The request was based on the failure of the police to take any effective action. In his letter Mr. Golden pointed out that his June 6 request that the Commissioner undertake an investigation had "apparently (been) misconstrued" and went on to say,

> ...and in a letter dated June 10th, 1985 you advised us that you had requested the Police Complaints Investigation Bureau "to continue investigating this matter". Notwithstanding the other concerns detailed in our letter of June 6th, 1985, we were content to leave matters alone, confident that as the Bureau had investigated this matter for some 9½ months before submitting the "final report" on May 24th, 1985, a conclusive final report would be quickly forthcoming.
>
> A further period of almost 4 months has now passed. During this time not only have we not received the final report, but we have

> (2) Where a chief of police is liable in respect of a tort committed by him in the performance or purported performance of his duties, he is also liable and may be sued separately in his capacity as chief of police for the purposes of subsection (4).

Section 24(5) provides that where damages and costs are awarded against a member of a police force the council of a municipality "may, in such cases and to such extent as it thinks fit", pay any such damages and costs, or in connection with a settlement, but s-s.4 provides that the municipality "shall" pay any damages and costs awarded against the chief of police, and, subject to the approval of the council, any sum required for a settlement. In the light of the positive obligation on a municipality to pay damages and costs awarded against a chief of police as vicariously liable for the acts of his officers, there would appear to be a virtual obligation on the part of counsel for a plaintiff in an action against officers of a police force to include the chief as a defendant. I shall have more to say about the claim based on s.24 later.

Mutual criminal charges had been laid by Ramsay and the officers but on May 13 these were withdrawn by agreement. Thereupon the officer in charge of the investigation, who by then was Staff Sergeant Williams, made a "Final Report" dated 24 May which concluded, "As the complainant has withdrawn his complaint in court, no further action will be taken". There was no agreement to withdraw the complaint and thus no basis for the decision to end the investigation.

not received an interim report or other communication fom the Bureau indicating the status of their investigation.

After repeated attempts our office was finally able to contact Staff Sergeant Williams on October 1st, 1985. At that time Staff Sergeant Williams indicated that there was yet another witness which he felt compelled to interview before he would be confident that he had been "thorough" in his investigation. What's more, the Sergeant indicated that in view of the fact that a "final report" had been issued on May 24th, 1985 no interim reports were contemplated and further that at the conclusion of his investigation he would simply direct a letter to the "deputy" who would decide what further step to take: no (new) "final report" would be made.

The failure to issue interim reports is clearly in violation of s.9(2) of the 1981 Act (s.11(2) of the 1984 Act) unless the Commissioner has been notified pursuant to s.9(3) of the 1981 Act (s.11(3) of the 1984 Act).

The suggestion that no (new) final report will be issued is in violation of s.9(4) of the 1981 Act (s.11(4) of the 1984 Act). If, as the Bureau was obliged to assume by your direction of June 10th, 1985, this matter was not closed, then the "final report" on May 24th, 1985 could be no more than an interim report and they would be obliged to issue a new final report at the completion of their investigation.

These suggestions, however pale next to the egregious proposition that the reason for the now 13½ months delay in concluding this investigation is because of its thoroughness. If the police were as thorough in investigations of assaults alleged to have ben made by other than their number the administration of justice would be in a sorry state indeed.

We are concerned that further delay by the Bureau should not be permitted. We are also concerned, as noted in our letter of June 6th, 1985, that the manner of the conduct of this investigation, and in

> particular, as we strongly suspect, the release of material obtained through it to the officers against whom the complaint has been brought or their counsel is prejudicial to the interest of our client in civil litigation which we are independently pursuing in this matter.
>
> Accordingly, we would ask that the Commission direct the Bureau to cease its investigation forthwith and that the Commission initiate its own investigation.

As a result, Mr. Claire Lewis Q.C. who had succeeded Mr. Linden as Commissioner, served a Notice of Intention to Conduct an Investigation dated October 21 pursuant to s.14 of the Act. The Commissioner's action was based on the failure of the police force to furnish a summary of the investigation that had been accomplished within thirty days of the receipt of the complaint, pursuant to s.14(3) of the Act, which provides:

> 14(3) Notwithstanding any other provision of this Act, the Public Complaints Commissioner may inquire into and investigate the allegations in the complaint,
>
> (a) at any time after he receives the first interim report under subsection 9(2) or the thirty-day period mentioned therein has expired;
>
> (b) upon the request of the chief of police; or
>
> (c) where there are reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 9.

Several weeks later Ramsay's counsel received a copy of a report from Staff Sergeant Williams marked "Final Addendum", dated November, which referred to notice from the Commissioner's office to "take over investigation of this complaint" and concluded with the words, "Upon the completion of the investigation conducted by the office of the Public complaints commissioner, the Chief of Police or his designate will review the final report and you will be advised of his decision in due course". As we shall see, this promise has since been repudiated.

The Events of 1986

The page turns to 1986. In May the Commissioner's investigation was completed and forwarded to the Chief of Police. Section 10(1) requires the chief of police to "review a final investigation report" and decide what, if any, action is appropriate. Section 10 reads:

> 10(1) The chief of police shall review a final investigation report and he may order such further investigation as he considers advisable and may, unless he decides that no action is warranted,
>
> (a) cause an information alleging the commission of an offence by the police officer concerned to be laid and refer the matter to the Crown attorney for prosecution;
>
> (b) refer the matter to the Board for a hearing by the Board;
>
> (c) cause disciplinary proceedings to be taken under the Police Act and the regulations thereunder; and

(d) after giving the police officer concerned an opportunity to reply to the complaint, either orally or in writing, counsel or caution the police officer regarding his conduct,

but where the chief of police takes action under clause (b), (c) or (d), he shall not take action under any other of those clauses.

(2) Where the chief of police causes an information to be laid under clause (1)(a), such action shall not stay any hearing by the chief of police or by the Board unless the chief of police or the Board, as the case may be, is of the opinion that the hearing should be stayed until the court proceedings have been concluded.

(3) The chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Public Complaints Commissioner, the person who has made the complaint and the police officer concerned and, where his decision is that no action is warranted or he has taken action under clause (1)(d), the chief of police shall give his reasons therefor.

(4) The chief of police may designate any police officer to exercise any of his powers and perform any of his duties under this Act and the police officer so designated has the powers and duties set out in the designation and where any power is conditional on the opinion of the chief of police, the requisite opinion shall be that of the designated officer.

Where the Commissioner has conducted an investigation the chief is required to consider it in his review of a final investigation report. Section 14(5) reads:

14(5) The Public Complaints Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an inquiry and investigation under clause (3)(a) or (c) and shall give his reasons therefor in

> writing and, after he completes any inquiry and investigation under subsection (3), he shall forward the results thereof to the chief of police, and the chief of police shall consider such results in his review of the final investigation report under subsection 10(1).

The term "final investigation report" stems from s.9(4). It reads:

> 9(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report to be prepared and shall forward a copy thereof to the Public Complaints Commissioner, the chief of police, the person who made the complaint and the police officer concerned.

The "Bureau" referred to in s.9 is the Public Complaints Investigation Bureau that a chief of police is required to establish. Section 5 of the Act reads:

> 5(1) The chief of police shall establish and maintain for the purposes of this Act a branch of the Metropolitan Police Force to be known as the Public Complaints Investigation Bureau.
>
> (2) The chief of police shall ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints.

Thus, by May of 1986 the Chief was in possession of all that was required for the review the Act required. The Bureau's "Final Report" had been completed in May, 1985. Its "Final Addendum" had been completed in November, 1985. But the Chief did nothing. Having heard nothing from the Chief, Mr. Golden wrote on October 14 to Commissioner Lewis to say:

> A considerable time has passed since the commission has completed its investigation and reported. In view of the previous history of this matter, we respectfully request that you take whatever steps you may be able in order to speed up the process.

The response was that the Commissioner's report had been forwarded to the Chief of Police on or about May 13.

In November, counsel for Ramsay wrote to Chief Marks, and said:

> We are advised by the office of the Public Complaints Commissioner that their investigation was completed and forwarded to the Chief of Police on May 13, 1986.
>
> You, as Chief of Police, are required by s.10 of the Metropolitan Police Force Complaints Project Act, 1981, or by s.14 of the Metropolitan Police Force Complaints Act, 1984, to make a decision, and to forthwith give notice of that decision to, among others, the complainant.
>
> We also remind you that you are a defendant in a civil action brought by the complainant arising from the same subject matter as the complaint, S.C.O. Action No. 991/85.
>
> If within 20 days of this letter a decision is not made as required by the above statutory authorities, and notice given of same, we will bring an application for judicial review to the appropriate Court.

By letter dated 3 December, R. Malcom, who signed it as "A/Deputy Chief of Police, Complaint Review Officer", wrote to Ramsay's counsel as follows [s.14(7) is s.10(4) of the Act]:

> This is to acknowledge your letter of November 27, 1986, addressed to Chief Marks. The Chief has requested that I respond on his behalf in the capacity of an officer of this Force designated by the Chief to exercise the powers of the Chief as provided in the Metropolitan Toronto Police Force Complaints Act, section 14(7).
>
> Accordingly, I now advise you that since your client has brought a civil action against the Chief following the filing of the complaint, no final investigation report, under section 14, will be delivered in this matter until such time as the civil action has been disposed of.
>
> The reason for this decision is that to render a decision on the complaint at this time might place the chief in a position of conflict of interest with the individual police officer defendants in the civil action and violate a trust arrangement with such officers arising out of the fact that both the Chief and the officers are defended by the same solicitor in the civil action.
>
> If you feel this an insufficient reason then we would welcome your application for judicial review to determine the issue.

The promise of a review given in the "Final Addendum" report was made long after the commencement of the civil action. Although nothing has changed the promise was now repudiated.

The Events of 1987

We thus come to the year 1987. On October 7, Ramsay's counsel wrote to the Metropolitan Board of Police Commissioners. He directed the letter to the attention of the Chairman, Clare Westcott, reviewed the history of the matter, and requested the Commissioners to direct the chief to fulfil his statutory obligation. His letter said:

On September 7, 1984 our client, Dana Ramsay filed a formal complaint with the office of the Public Complaints Commissioner alleging that the above-named officers assaulted him on the 26th of August, 1984 in an enclosed hallway at Exhibition Stadium in Toronto.

After numerous delays in the investigation by the internal police public complaints bureau the Public Complaints Commissioner has, by notice dated October 21, 1985 assumed the conduct of the investigation. Its report was delivered to the Chief of Police on May 13, 1986 to enable him to exercise his jurisdiction under Section 14 of the Metropolitan Toronto Police Force Complaints Act.

To this date, the Chief of Police has done nothing. He has neither taken disciplinary action against the officers involved nor has he indicated that no action would be taken. His inaction is deliberate and has continued the delay in dealing with the officers to a point now three years past the event which is the subject of the complaint. By simply doing nothing he has effectively prevented my client from proceeding to the Commission in disciplinary proceedings and has totally frustrated the processes of the legislation granting citizens their right to impartial review.

Section 18(5) of the Act requires the chief of police to make a decision on the report. I am writing to you in an effort to secure the performance of this duty so that my clients and the Commissioner can pursue their respective rights and duties.

This matter is replete with attempts by the police complaints bureau to sidetrack the investigation and discourage Mr. Ramsay from pursuing the discipline of the officers involved.

As is usual in cases such as this, the police officers involved laid charges of obstructing a police officer against my client and against others, some of whom are his friends and relatives. The officers themselves were charged with assault. In order to prevent his friends being tried, Mr.

Ramsay withdrew his charges against the police in exchange for the Crown's withdrawal against all the civilians on May 13, 1985.

On May 24, 1985, the Bureau reported on the mutual withdrawal of the charges and noted at the bottom of the report of that date "AS THE COMPLAINANT HAS WITHDRAWN HIS COMPLAINT IN COURT, NO FURTHER ACTION WILL BE TAKEN".

This highly misleading statement required us to write the commissioner who then wrote the Staff/Inspector in charge of the Public Complaints Investigation Bureau, asking him to continue investigating the matter and, subsequently, at our request, on October 21, 1985 assuming the conduct of the investigation directly.

As we have earlier indicated, the report of that investigaiton was sent to the Chief of Police on May 13, 1986. He has specifically refused to take any action or to decline to take any action, effectively tying the hands of the commissioner and our client. We feel strongly that this deliberate frustration of the process is contrary to the spirit and intent of the act, is clearly wrong and we respectfully request that the Commission direct the chief of police to carry out his duties under the Act.

Mr. Ramsay commenced an action for damages against the relevant officers on February 21, 1985. The Chief of Police has been named as a defendant in the action solely because of the mandatory provisions of Section 24(1) of the Police Act. It is not alleged that he was involved in the incident in any way.

In a letter to our office dated December 3, 1986, his Assistant Deputy has advised that "no final investigation report, under Section 14, will be delivered in this matter until such time as the civil action has been disposed of." His letter claims a conflict of interest would arise with the individual police officers and "violate a trust arrangement with such officers arising out of the fact that both the Chief and the officers are defended by the same solicitor in the civil action." Such a position is not

only incomprehensible, it is clearly in violation of the statutory duty of the chief to make a decision as required by Section 18(5) of the statute.

We also note that the chief may designate any police officer of the rank of inspector or higher to exercise any of his powers and this substitution has not been made. (Sec. 14 (7)). The final investigation report has been made by the Commission.

We have threatened judicial review proceedings. However, on consideration of the underlying philosophy of the statute and the policy of the commission concerning the discipline of police officers we felt that this direct approach would avoid the resulting substantial loss of time and tremendous cost, neither of which burden should be carried by a citizen who wishes to have the conduct of these three officers toward him investigated and, if warranted, punished.

Three years have now passed since the initial complaint was filed. Our client alleges that he was deliberately and severely beaten by the officers in question and they have, in turn, denied his allegations. It is clear that the issue is one of overwhelming public importance and that any further delay created by the police department in bringing these allegations to a proper adjudication is a denial of justice and will undermine confidence in the system which has been so carefully established in Metropolitan Toronto for impartial review.

We respectfully request that you direct the chief of police to either delegate his responsibility to decide to take action or not or to assume the responsibility himself.

This brought a response from Jane E. Egan, a solicitor in the employ of the Metropolitan Toronto Legal department. On October 14, she wrote to Ramsay's counsel:

I have a copy of your letter dated October 7th, 1987 addressed to Mr. Westcott. Mr. Parker has given me the copy of the letter you sent to him. As you know, I have also taken over the handling of the defence of the civil action from Mr. Parker.

From your own letter, it is clear that the Chief of Police has done something regarding the complaint. In the last paragraph on page two of your letter it is obvious that the Chief, through his designated officer; i.e., the Deputy Chief, has advised you about the reason why he has not reviewed a final investigation report.

You have accused the Chief of deliberately trying to frustrate the complaint process. Such an accusation is most unfair. As Mr. Lewis can confirm, the position taken by the Deputy Chief in this complaint is the position taken on all complaints where this office is defending the Chief and individual officers in civil actions. The legal opinion that the Deputy Chief should not review the final investigation reports pending dispositions of civil actions, because of a conflict of interest, came from this office, as Mr. Lewis knows.

I have no idea what you mean by saying that "this matter is replete with attempts by the police complaints bureau to sidetrack the investigation...". Your client is free to submit complaints about the conduct of any such officers.

I am somewhat surprised that it has taken you until October 7th to complain about a letter you received from the Deputy Chief almost ten months ago.

The fact of the matter is that you could arrange a pre-trial in the civil action and have it put on the assignment court list within a few short months. The trial could be heard in January if you took these steps. Once the trial has been held, the Deputy Chief could then review the final investigation report.

> In other words, I don't understand why you don't proceed with the civil action? It would be much quicker than judicial review proceedings.
>
> I am not sure why you have directed your letter to the attention of Mr. Westcott. The Board of Commissioners of Police has no role under the legislation in these circumstances. Since the Chief and the designated officer are acting upon legal advice, the personal nature of your attack is unjustified. [Emphasis added]

Disregarding the unfortunate tone of this letter I am bound to disagree with the statement that the civil action "would be much quicker than judicial review proceedings". I doubt it. The letter discloses a policy of delay adopted by the police force on the advice of the legal department which we will see further revealed in further communications. I have added emphasis in the foregoing extract to stress the general adoption of the policy; it is not confined to this action. It is applied whether the chief is sued personally under s.24(5) or vicariously, as here, under s.24(1).

The response from the Police Commission was brief. On October 19 Clare Westcott wrote to Mr. Golden:

> I have received a copy of the letter dated October 14th sent to your attention by Jane Egan from the office of the Metro Solicitor in which she responded to your letter to me of October 7th.
>
> I can see little that I might add to what Ms. Egan has set out in her letter to you.

I have had as well recent correspondence with Clare Lewis, Public Complaints Commissioner, on this issue and specifically as it concerns your client Mr. Ramsay.

I will say, however, that I will be bringing the complete file to the atttention of the Members of the Board of Commissioners for their information in the next few days.

On October 27 Ramsay's counsel Mr. Waldmann wrote to Ms. Egan, as follows:

Your letter addressed to Aubrey Golden of our firm has been passed to me for response.

We do not consider the Chief of Police's deliberate decision to do nothing about the complaint, thereby throwing a roadblock into the complaint process, the same as doing "something about the complaint". Doing nothing is not one of the options that the Chief of Police has been given under the Act. His duty is set out clearly in s.14(1) of the Metropolitan Toronto Police Force Complaints Act which requires him to review the final investigation report and to either;

- decide no action is warranted; or

- cause an information to be laid (a);

- order the complaint to be heard by a board of inquiry (b);

- cause disciplinary proceedings to be taken; or

- caution the police officer regarding his conduct.

The Chief of Police is also fully aware that his decision to do nothing frustrates the complaint process. It is only after his decision has been made under s.14(1) that the complaint can proceed.

You indicate that this decision should not be characterized as deliberate because it is based on a legal opinion. You state this legal opinion is based upon conflict of interest. However, you do not indicate what exactly this conflict is, and why this would prevent the Chief of Police from designating a police officer under s.14(7) to make the decision, thereby permitting the complaint to proceed. Surely, you are not suggesting that all police officers have a conflict of interest whenever there is a complaint against one of them. Further, a legal opinion is not an excuse for disobeying the law.

You indicate that the Chief of Police has a consistent policy of disobeying s.14 of the Act, whenever a complaint is serious enough to cause the complainant to bring a civil action. There is no provision in the Act permitting the chief to ignore the Act's mandatory directions on the basis that there is a civil suit.

In respect of attempts to sidetrack the investigation, you must be aware that the police investigator on the complaint tried to end the complaint on his own in May of 1985, contrary to s.12 of the Act. This required intervention by the Police Complaints Commissioner on June 10, 1985. Notwithstanding this first intervention, the Police Complaints Commissioner had to again intervene and remove the investigation from the police in October of 1985. I provide these examples to you merely by way of illustration.

You are fully aware that the civil suit is proceeding and that the only delay is due to your clients' refusals to answer questions on Examinations for Discovery. In our conversation of yesterday, we agreed to the first available date the court has for the motion on these refusals, being January 7, 1988.

The reason for directing this matter to the attention of the Board of Commissioners of Police is that the Board has a direct interest in whether the Chief of Police has a policy and practice of

disobeying the law. Further, the Board has the power to direct the chief of Police to obey the law in s.17(1) of the Police Act.

Section 17(1) of the Police Act R.S.O. 1980, c.381 states:

> 17(1) Notwithstanding section 2, the board is responsible for the policing and maintenance of law and order in the municipality and the members of the police force are subject to the government of the board and shall obey its lawful directions.

Mr. Waldmann wrote also on the same day to Mr. Westcott. He said:

> Thank you for your letter of October 19, 1987 addressed to Aubrey Golden, which has been passed to me for response. I enclose for you a copy of our letter of today to Jane Egan, replying to her position set out in her October 14th letter.
>
> It is our opinion that the Board of Commissioners of Police has an interest in ensuring that the Chief of Police obeys the law, and that it has the power under s.17 of the Police Act to direct the Chief to do so.
>
> As recently as October 24, 1987, the Globe & Mail quoted yourself as saying (with regard to another law, the Young Offenders Act): "We have to follow the letter of the law very strictly, and that's what was done".
>
> The Metropolitan Toronto Police Complaints Act is also part of the law, and has to be strictly followed. Ms. Egan's letter of October 14th indicates that there is now in force a policy and practice to disobey s.14 of this law whenever the matter is so serious that the complainant brings a civil action.

> We ask that this matter be placed upon the agenda of the next meeting of the Board, and that we be permitted to address the Board on this question.

Ms. Egan responded in the following terms in a letter to Mr. Waldmann dated October 28th:

> I am not going to enter into a debate with you regarding the legal opinion given to the Chief. I suspect the Board will not be interested in hearing a legal debate either. Your remedy is in the courts.
>
> I did not indicate that the chief has "a consistent policy of disobeying Section 14 of the Act". There is little point in attributing your statements to me.
>
> I do not monitor complaints investigations. If your client has a complaint about the investigation, you know where to file it.
>
> As far as the civil action is concerned, the pace at which you proceed is up to you. The fact that it has taken you several months to schedule a motion has nothing to do with me or my clients.
>
> Frankly, I think the only reason you are writing directly to the Board is to try and intimidate the Chief. Mr. Golden didn't even have the courtesy to send a copy of his letter of October 7, 1987 to the Chief.
>
> It is extremely offensive to suggest that the Chief "has a policy and practice of disobeying the law". However, the Chief does have a policy and practice of following legal advice.

The correspondence with the Board of Police Commissioners concludes with Mr. Westcott's letter to Mr. Golden of December 17 as follows:

> This is in response to your correspondence requesting the Board to direct the Chief of Police to take certain actions under the Complaints Act with respect to the abovenoted complaint.
>
> The Board has concurred in an opinion from the Metropolitan Legal Department that it does not have jurisdiction to direct the Chief of Police in this matter. The Board understands, however, once the trial in the civil action is held, the Deputy Chief can review the final investigation report.
>
> The Board must adhere to the legal considerations that apply in these cases, but understands the concerns raised in your correspondence. As you know, the Public Complaints Commissioner has also indicated his concerns about delays in the complaints process by reason of outstanding criminal or civil matters, and the Board will be meeting with him at a future date to discuss this matter.

Whether the Board ever had the meeting proposed to discuss the Public Complaints Commissioner's concern about delays in the complaints process we were not told.

The Events of 1988

That completes the correspondence filed by applicant. However, respondents have placed before us further correspondence which, confirms that the chief, the Board, and presumably the the police officers, are relying on advice given by Ms. Egan. Thus we have a letter from Ms. Egan to Mr. Waldmann dated February 2, 1988 - we have now reached that year - in which she says:

When I received your Application Record from the police on February 1st, 1988, I saw, for the first time, the actual letter (Exhibit "M") that the Acting Deputy Chief sent to you dated December 3, 1986.

Clare Lewis was at the meeting I attended with several police officers when the issue was raised as to whether the Chief could review the final investigation report in view of Mr. Ramsay's civil action. The advice I gave was that the civil action raised several problems, one of which is contained in the letter which is Exhibit "M". At the meeting, I also pointed out that complainants like Mr. Ramsay would perceive some bias or conflict on the part of the Chief regarding any decision he made under the Act, in view of the fact that the Chief was also being sued with the individual officers.

In effect, I wanted to advise you that I intend to raise in the Divisional Court all issues that arise from the existence of the civil action.

(Exhibit "M" was Deputy Chief Malcolm's letter).

Mr. Waldmann responded,

Thank you for your letter of February 2, 1988 received today.

As you have described the legal advice which you have provided your clients, it is our position that you have effectively waived the privilege regarding same.

As you have indicated that you will raise in Divisional Court the issues that arise from the existence of the civil action,

> and those issues are asserted to be related to the advice given to your clients, apparently in the presence of Mr. Clare Lewis who we understand is not your client, I look forward to reviewing your own Affidavit in the Respondent's Motion Record to the Application.

Ms. Egan's brief reply of February 10 concludes the correspondence:

> You and Mr. Golden have freely expressed many opinions about the issues in this case and you filed a secretary's Affidavit. I will provide whatever material I deem necessary in the Respondents Application Record.

Ms. Egan chose not to file an affidavit other than one prepared by a secretary in her office, which served merely to introduce the correspondence and certain court documents.

I confess that I have the same difficulty expressed by counsel for Ramsay in understanding the conflict of interest given as the reason for the chief's refusal to perform his statutory duty. First, I have difficulty in knowing what it is, for not one but two versions have been put forward. In his letter of 2 December, 1986, Deputy Chief Malcolm put it on the basis of representation of defendants with possibly antithetical interests by the same solicitors, the Metro Legal Department. Ms. Egan, however, put it on a different basis in her letter of 2 February,

1988. It was that "complainants like Mr. Ramsay would perceive some bias or conflict of interest on the part of the Chief regarding any decision he made under the Act, in view of the fact that the Chief was also being sued with the individual officers."

Whichever reason is taken as the real one, it is not a basis for delay in acting on the final report or for a refusal to act on it that is recognized by the Act. There is nothing in the Act to justify either refusal or delay. The problem arising from all defendants being represented by the Metro Legal Department is the creation of the chief, the Board, and the police officers and the legal department. We were assured by Mr. Waldmann on the hearing of the application that the chief is not being sued in his personal capacity pursuant to s.24(2) but only for the purpose of imposing liability on him in his titular capacity of chief, pursuant to s.24(1) of the Police Act, in order to make the municipality responsible for any judgment for damages that Ramsay might obtain. To assert a claim of that nature is not only prudent, it is clearly essential in an action against police officers. I would think that any lawyer acting for a claimant in Ramsay's type of claim might be thought to be derelict in duty for failure to include such a claim, for if the individual police officers were unable to pay an award of damages a successful plaintiff would go away empty-handed, or worse, out of pocket to the extent of his or her solicitor and client bill. If the chief is being sued on the basis of his vicarious liability there may, I suppose, possibly exist a conflict. The statute imposes the

common law of master and servant. How that concept could be made to apply, given that police officers are not in the ordinary category of employees, I need only question, not decide, but I note that the point is raised in the statement of defence. But apart from that the chief could, in appropriate circumstances, defend on the ground that the officers were acting outside the scope of their duty. A conflict could arise if the officers claimed they were simply obeying orders. In such a case separate representation would be necessary.

But that is not this case. In the statement of defence filed in the civil suit the officers allege they "were carrying out their duties as police officers." There is no allegation that they were acting outside the scope of their duty. There is thus no conflict among the defendants.

The second excuse for the chief's inaction given by Ms. Egan in her letter of February 2 based on a perception by Ramsay or "complainants like" him of "some bias or conflict of interest on the part of the Chief regarding any decision he made under the Act" is clearly untenable in light of the chief's authority to delegate the responsibility for the decision to someone else, found in s.10(4) of the Act on p.9 of these reasons. Indeed, the chief appears to have already made a delegation. In his letter of December 3 Deputy Chief Malcolm states that he is responding at the request of and on behalf of the Chief "in the capacity of an officer of this Force designated by the Chief to exercise the powers of the Chief as provided in the (Act)". In the light of

this, it is difficult to understand Ms. Egan's letter, written after Deputy Chief Malcolm's, that it was Chief Marks who would be called upon to make the decision in this case.

There is thus nothing in either reason and no basis for the legal opinion on which the policy of delay adopted by the Chief, the officers and the Board of Police Commissioners, is said to rest.

The legislation serves a clear public purpose: it is to shield the public against wrongful acts by members of the police force, and to provide a process by which allegations of wrongdoing may be resolved without the enormous trouble and expense of a trial in the law courts. Ms. Egan's invitation to applicant to bring an application for judicial review is without any apparent concern for the cost. An application such as the one Ramsay was finally forced to bring before this court can easily cost in the range of $15 to $20 thousand. That is enough to deter most complainants, however strongly they might feel about alleged misconduct by police officers. When it comes to a contest of pocket-books, there is unlikely to be much question about whose is deeper, a complainant's or the Municipality of Metropolitan Toronto's.

The fact is that in persisting with his complaint Ramsay is serving the public interest. There is nothing in it for him. If he is successful, in the sense that the allegations he

makes against the officers are proven, it will not put a penny in his pocket. Nor is there any other apparent advantage to be gained by him personally save vindication. The effect of success will be only in terms of some discipline meted out to the officers as a penalty to them and a deterrent to others. It is only the public who can benefit.

Ramsay has turned without success to everyone who might be thought to be able to help. He has even appealed to the Chairman of Metropolitan Toronto, Mr. Dennis Flynn, whose interest might stem from s.4(6) of the Act, now 4(4), under which Metro nominates one third of the members of the Police Complaints Board. By letter dated October 19, 1987 Mr. Flynn wrote to Mr. Golden to thank him for his letter of October 17 and to say "I am looking into the matters that you have raised, and will get back to you as soon as possible". We were not informed of any action taken by Mr. Flynn. It is perhaps a fair assumption that he was not able to accomplish anything effective for otherwise this application would have been unnecessary.

Since all suits against police officers will involve the chief as a defendant and since a civil suit may be expected as a concomitant to a complaint, the Metropolitan Police Force, with the approval of the Metropolitan Board of Police Commissioners, have effectively frustrated the Ontario legislature's objective to provide a cheap, expeditious and effective means of investigating alleged misconduct on the part

of the Metropolitan police officers. To refuse to review a final report until civil suits have been disposed of is to refuse to do it indefinitely. It is common knowledge that civil law suits can go on for years before judgment, and years thereafter if appealed. A glance at the Act makes it clear that the legislature sought to impose an expeditious timetable for the processing of complaints that is entirely at odds with the notion that they may be delayed to await the outcome of civil law suits. First, there is nothing in the words of the Act to authorize delay on this ground. Rather, there are words to the contrary. Section 10(2) on p.9 of these reasons authorizes the Chief to stay a hearing by him or the Board pending the conclusion of criminal charges he has instigated, on the basis of a common maxim of the interpretation of statutes - expressio unius est exclusio alterius: the inclusion of one implies the exclusion of others. The fact that express authority to impose a stay is granted in one situation implies that it is not granted in others.

Beyond that, as Ms. McIntosh points out, the Act contains guidelines clearly intended to accomplish the expeditious resolution of complaints. Section 5 obliges the chief to "establish and maintain" an investigation Bureau, as we have seen, but it also requires the chief to "ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints". The procedure for the

investigation of complaints is replete with "forthwiths". Ms. McIntosh says there are ten of them. Here are some examples, (with emphasis added). Section 7 states,

> 7. Upon receipt of a complaint, the person in charge of the Bureau shall inform forthwith the police officer concerned of the substance of the complaint, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint.

Section 9 provides evidence of the legislature's desire for expedition:

> 9.--(1) Where a complaint is not resolved informally, the person in charge of the Bureau shall cause an investigation to be made forthwith into the complaint in accordance with prescribed procedures.
>
> (2) The person in charge of the Bureau shall forward to the Public Complaints Commissioner, the person who made the complaint and the police officer concerned an interim report in the prescribed form providing a summary of the investigation to date not later than thirty days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation.
>
> (3) Notwithstanding subsection (2), the person in charge of the Bureau may decide not to make a report to the person who made the complaint and the police officer concerned where, in his opinion, to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the Bureau shall forthwith notify the Public Complaints Commissioner of the reasons for his decision.
>
> (4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report to be prepared and shall forward a copy thereof to the Public Complaints Commissioner, the chief of police, the person who made the complaint and the police officer concerned.

...

Section 10(3) states:

> (3) the chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Public Complaints Commissioner, the person who made the complaint and the police officer concerned and, where his decision is that no action is warranted or he has taken action under clause (1)(d), the chief of police shall give his reasons therefor.

Section 11 states:

> 11.--(1) Where the chief of police has caused disciplinary proceedings to be taken under the Police Act and the regulations thereunder, subsections 19(4), (6), (10), (11) and (12) of this Act apply with necessary modification to a hearing held in connection with such proceedings.
>
> (2) The chief of police or, if he is not the person who holds a hearing referred to in subsection(1), the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the Public Complaints Commissioner, the person who made the complaint and the police officer concerned.

Section 14 deals with the Public Complaints Commissioner. It also contains provisions that attest to the need for expedition. These include subsection (3):

> 14(3) Notwithstanding any other provision of this Act, the Public Complaints Commissioner may inquire into and investigate the allegations of the complaint,
>
> (a) at any time after he receives the first interim report under subsection 9(2) or the thirty-day period mentioned therein has expired;

...

(c) where there are reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 9.

...

(5) The Public Complaints Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an inquiry and investigation under clause (3)(a) or (c) and shall give his reasons therefor in writing and, after he completes any inquiry and investigation under subsection (3), he shall forward the results thereof to the chief of police, and the chief of police shall consider such results in his review of the final investigation report under subsection 10(1).

The law is clear that statutory powers must not be used to defeat a statutory objective: See Re Doctors Hospital and Minister of Health (1976), 12 O.R.(2d)164; Re Multi-malls Inc. and Minister of Transport and Communications (1976), 14 O.R.(2d) 49. The clear object of the Act is expedition. The objective of this legislation is defeated by a policy of delay.

It is apparent to me that the police force is strongly opposed to the Legislation. What service it has performed in ostensible obedience to it amounts to little more than lip service. The object of the investigation required of the Investigation Bureau is surely to reveal what has been done and discovered to those directly interested, i.e. the complainant, the officer or officers complained against, and the chief. That is made clear by the provisions of section 9 (see above) which

provide for interim summaries to be sent to those persons "on a monthly basis during the course of the investigation" as well as the final report. Even the "prescribed form" makes that clear, in referring to the "type of information and information obtained".

It is thus distressing to see that the reports, which purported to result in not one but two "final" reports, are empty of any useful or relevant information. They amount to little more than a bare and perfunctory calendar of appointments kept or missed. ...

There is nothing in these of any significance whatever. In my opinion, a simple chronicle of dates and times is not compliance with either the letter or the spirit of the Legislation.

It is distressing that four years after a prompt complaint nothing has been accomplished. The reports which the chief was duty bound to review promptly sit on his or his deputy's shelf gathering dust. How many other complaints lie in limbo because of the policy of delay we do not know.

In the result I would grant the application and direct the chief of police forthwith to carry out the duty imposed on him by s. 10 of the Act. He must review the final report, consider the results of the Commissioner's investigation, and make a decision. If there is further undue delay Applicant should be at liberty to bring it to the attention of this court. Any such application should be at the cost of those responsible.

Applicant requests an order directing the chief to refer the complaint to the Complaints Board but in my opinion that we cannot do. The law is clear: mandamus (or its equivalent in the form of a direction obtained on judicial review) lies only to require a statutory duty to be done, not the way in which it shall be done. The chief has a discretion to exercise. The Act gives him alternatives. He may order "such further investigation as he considers advisable", or decide that "no action is warranted". He may choose any of the further alternatives set out in s. 10(1)(a), (b), (c), or (d), (pp. 8-9). The force of my proposed order is that he must make a decision, not what decision he should make.

The final issue is costs. These proceedings were virtually demanded by the respondents. Ramsay's counsel were repeatedly told to "go to court". Deputy Chief Malcolm, "Complaint Review Officer", said in his letter of December 3rd, 1986, "If you feel this (the policy of delay) is an insufficient reason then we would welcome your application for judicial review to

determine the issue." Ms. Egan said, in her letter of October 28th, 1987, "I am not going to enter a debate with you regarding the legal opinion given to the Chief. I suspect the Board will not be interested in hearing a legal debate either. Your remedy is in the courts."

Respondents forced applicant to bring the application and have lost. There is no reason why applicant should be out of pocket as a result. The only just order in my opinion is "costs to applicant on a solicitor and client basis". The Attorney General does not seek costs.

I would grant the application.

R.F. Reid

Released: September 30, 1988

- Certificate of Official Document

A69/87

FILE NO.

SUPREME COURT OF ONTARIO

(COURT OF APPEAL)

This is to Certify that the annexed document, each page of which is stamped with the seal of the said Court as identifying the same, is a true copy of

the Endorsement of the Court of Appeal dated the 11th day of January, 1988.

in a certain proceeding in the said Court; namely,

TERRENCE WELLER

Appellant

- and -

METROPOLITAN TORONTO POLICE CONPLAINTS BOARD AND ROBERT NEELY

Respondent

Given under my hand and seal of the said Court, at ....Toronto.....
this .....18th..... day of .....May....., 19.89.,
being an officer duly authorized to give this certificate.

M.A. de Sa.

ASSISTANT REGISTRAR, COURT OF APPEAL

A-69/87

Monday, Jan. 11/88

SUPREME COURT OF ONTARIO

COURT OF APPEAL

BETWEEN:

TERRENCE WELLER

Appellant

- and -

METROPOLITAN TORONTO POLICE
COMPLAINTS BOARD
and ROBERT NEELY

Respondent

SUPPLEMENTARY RECORD

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55-51

Stay
Supt.

THE SUPREME COURT OF ONTARIO
FILED
JAN 5 1988
THE COURT OF APPEAL
SUPREME COURT OF ONTARIO

COURT OF APPEAL FOR ONTARIO

BEFORE DUBIN ACJO ZUBER AND ROBINS JJA

DATE JAN 11 1988

DISPOSITION OF APPEAL

motion for leave to appeal dismissed. -

The proposed Notice of Motion is amended to conform to evidence.

Leave granted and cross appeal dismissed.

Robins JA

APP. GORDON HENDERSON Q C.

RESP. JOHN A OLAH for NEELY

A/G LUCY COCCHETTO

APPENDIX E

Bill 4 Government Bill

1st SESSION, 34th LEGISLATURE, ONTARIO 36 ELIZABETH II, 1987

Bill 4

An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984

The Hon. I. Scott
Attorney General

1st Reading November 4th, 1987
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly by the
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EXPLANATORY NOTES

The purpose of the Bill is to permit the extension of the police complaints procedure to municipalities other than Metropolitan Toronto on the request of the municipality.

SECTIONS 1 and 2. The amendments to the definitions adjust the terminology so that it is not confined to Metropolitan Toronto but can apply to any municipality to which the Act applies. The Commissioner's title is changed from "Public Complaints Commissioner" to "Police Complaints Commissioner".

SECTION 3. The new section authorizes municipalities to adopt by-laws requesting the Lieutenant Governor in Council to designate them by regulation (under clause 31 (ea) of the Act, as enacted by section 16 of the Bill). A regulation may only be made where such a by-law is passed.

SECTIONS 4 to 7. The amendments make no change in substance except to refer to all designated municipalities.

SECTION 8. Under existing section 11 of the Act the report of the Bureau's investigation is given to certain persons. The amendment would provide that the result of a further investigation by the chief of police on the request of the Commissioner be given to the same persons.

SECTION 9. Existing section 14 authorizes the chief of police to delegate to an officer of the rank of inspector or higher. The amendment permits the delegation to be to a senior officer where the police force does not have the rank of inspector.

SECTION 10. The amendment removes any doubt that the appeal from the decision of a chief of police on a disciplinary hearing is to be taken under the *Metropolitan Toronto Police Force Complaints Act, 1984* and not the *Police Act*.

SECTIONS 11 to 15. See explanatory note for sections 4 to 7 (except for subsection 13 (1)).

Clause 23 (2) (b) of the Act makes the Attorney General a party to hearings before a board of inquiry, except when the hearing is in respect of a penalty imposed on an officer. The amendment in subsection 13 (1) ensures that the Attorney General is not excluded from participating where the officer's hearing is combined with the complainant's hearing.

SECTION 16. The amendment authorizes a municipality to be designated by regulation where it has passed a by-law requesting the designation.

SECTION 17. The short title of the Act is amended to remove specific reference to the Metropolitan Police Force.

1

Bill 4 **1987**

An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clauses 1 (a) and (b) of the *Metropolitan Toronto Police Force Complaints Act, 1984*, being chapter 63, are repealed and the following substituted therefor:

(a) "Bureau" means a Public Complaints Investigation Bureau established under section 5.

(2) Clause 1 (c) of the said Act is amended by striking out "Public" in the first line and inserting in lieu thereof "Police".

(3) Section 1 of the said Act is amended by adding thereto the following clause:

(ca) "designated municipality" means The Municipality of Metropolitan Toronto and the municipalities that are designated by a regulation made under clause 31 (ca).

(4) Clause 1 (i) of the said Act is repealed and the following substituted therefor:

(i) "police association" means the association as defined in the *Police Act* for the police force of a designated municipality. R.S.O. 1980, c. 381

(5) Section 1 of the said Act is further amended by adding thereto the following subsection:

References to local bodies

(2) A reference in this Act to a police officer, chief of police, police force, Bureau, board of inquiry or panel for boards of inquiry means the one appointed or established for the designated municipality that the subject officer serves.

2. Section 2 of the said Act is amended by striking out "Metropolitan Police Force" in the third line and inserting in lieu thereof "police force of a designated municipality".

3. The said Act is amended by adding thereto the following section:

By-laws to request application of Act R.S.O. 1980, c. 381

2a.—(1) The council of a municipality that maintains a police force other than by agreement under section 64 of the *Police Act* may, by by-law, request the Lieutenant Governor in Council to designate the municipality as one to which this Act applies.

Idem

(2) The council of a municipality that maintains a police force by agreement under section 63 of the *Police Act* may pass a by-law under subsection (1) only if the municipality providing the services is a designated municipality.

4.—(1) **Subsection 3 (1) of the said Act is amended by striking out "Public" in the second line and inserting in lieu thereof "Police".**

(2) Section 3 of the said Act is amended by adding thereto the following subsections:

Local offices

(6a) The Commissioner shall establish a local office in each designated municipality.

Communication to Commissioner by local office

(6b) Any matter or thing that is required or permitted by this Act to be given to or served upon the Commissioner shall be given or served at the local office of the Commissioner.

5. Section 4 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 31, section 1, is repealed and the following substituted therefor:

Panels for boards of inquiry

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons for each designated municipality to act as members of boards of inquiry.

Recommendation for appointment

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers, who are jointly recommended for appointment by the board of commissioners of police of the designated municipality, or, where there is no board, the council, and by the police association, if any.

Failure to make joint recommendations

(4) If the joint recommendations referred to in subsection (3) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Individual recommendations to be considered

(5) Before making the recommendation referred to in subsection (4), the Attorney General and Solicitor General shall consider any recommendations made by the board of commissioners of police or council alone or the police association alone.

Recommendations for appointment

(6) One-third of the members of the panel shall be persons recommended for appointment by the council of the designated municipality.

Failure to make recommendations

(7) If the recommendations referred to in subsection (6) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Term

(8) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Continuance in office for uncompleted assignments

(9) A member of the panel whose term expires without reappointment continues in office for the purpose of completing the work of a board of inquiry to which the member was assigned before the expiration of the term.

Members of Police Complaints Board under 1981, c. 43

(10) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (6) of this section, respectively.

Remuneration

(11) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

6. Subsection 5 (1) of the said Act is amended by striking out "Metropolitan Police Force" in the second and third lines and inserting in lieu thereof "police force".

7. Subsection 6 (1) of the said Act is amended by striking out "Metropolitan Toronto" in the second line and inserting in lieu thereof "the designated municipality".

8. Subsection 11 (6) of the said Act is amended by adding at the end thereof "the chief of police, the complainant and the subject officer".

9. Subsection 14 (7) of the said Act is amended by inserting after "higher" in the second line "or, if none, a senior officer who is not a member of the police association".

10. Section 16 of the said Act is amended by striking out "the officer may appeal" in the third line and inserting in lieu thereof "any appeal therefrom shall be taken".

11. Section 21 of the said Act is repealed and the following substituted therefor:

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the board of commissioners of police or council, as the case may be, shall forward the report along with their comments and any comments submitted to them by the chief of police or the police association, to the Attorney General, the Solicitor General and the Commissioner.

12. Subsection 22 (5) of the said Act is amended by inserting after "subsection 4 (3)" in the fifth line "or (4), as the case

may be" and by striking out "4 (4)" in the seventh line and inserting in lieu thereof "4 (6) or (7), as the case may be".

13.—(1) Clause 23 (2) (b) of the said Act is amended by striking out "where an appeal" in the first line and inserting in lieu thereof "in respect of an appeal that".

(2) Clause 23 (17) (a) of the said Act is amended by striking out "Metropolitan Police Force" in the first and second lines and inserting in lieu thereof "police force".

(3) Clause 23 (17) (b) of the said Act is amended by striking out "Metropolitan Police Force" in the first and second lines and inserting in lieu thereof "police force".

(4) Subsection 23 (20) of the said Act is amended by striking out "Metropolitan Board of Commissioners of Police" in the first line and inserting in lieu thereof "board of commissioners of police for the designated municipality or, where there is no board, the council".

14. Subsection 26 (1) of the said Act is amended by striking out "Metropolitan Police Force" in the second and third lines and inserting in lieu thereof "police force".

15. Section 29 of the said Act is amended by striking out "The Municipality of Metropolitan Toronto" in the second and third lines and inserting in lieu thereof "a designated municipality".

16. Section 31 of the said Act is amended by adding thereto the following clause:

(ca) designating a municipality that has passed a by-law under section 2a as a municipality to which this Act applies.

17. Section 36 of the said Act is repealed and the following substituted therefor:

Short title

36. The short title of this Act is the *Police Force Complaints Act, 1984*.

Commencement

18. This Act comes into force on the day it receives Royal Assent.

Short title

19. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Amendment Act, 1987*.

APPENDIX F

Government
of Ontario

Metropolitan Toronto Police Force Complaints Act, 1984

Statutes of Ontario, 1984
Chapter 63

as amended by
1986, Chapter 31

and

Ontario Regulation 494/85

Printed by Gérard J. M. Raymond,
*Queen's Printer for Ontario

1

CHAPTER 63

Metropolitan Toronto Police Force Complaints Act, 1984

1. In this Act, Interpretation

(a) "Bureau" means the Public Complaints Investigation Bureau;

(b) "chief of police" means the chief of police of the Metropolitan Police Force;

(c) "Commissioner" means the Public Complaints Commissioner appointed under this Act;

(d) "complainant" means a member of the public who makes a complaint in accordance with the provisions of this Act;

(e) "complaint" means an allegation or allegations, made orally or in writing, by a member of the public, concerning the misconduct of a police officer;

(f) "inquiry" means an allegation or allegations concerning conduct of a police officer that does not amount to "misconduct";

(g) "misconduct" means an act or omission on the part of a police officer that constitutes an offence under the Code of Offences set out in the Schedule to Regulation 791 of Revised Regulations of Ontario, 1980, made under the *Police Act*; R.S.O. 1980, c. 381

(h) "officer in charge" means the police officer who at any particular time, while on duty, is in charge of and responsible for, the proper functioning of a police facility;

(i) "police officer" means a police officer on the Metropolitan Police Force;

(j) "prescribed" means prescribed by the regulations;

(k) "regulations" means the regulations made under this Act;

(l) "subject officer" means a police officer who is the subject of a complaint. 1984, c. 63, s. 1.

Application of Act

R.S.O. 1980, c. 381

2. This Act applies to complaints and inquiries made by members of the public respecting the conduct of police officers on the Metropolitan Police Force and hearings under this Act and disciplinary proceedings under the *Police Act* and the regulations thereunder arising out of such complaints. 1984, c. 63, s. 2.

Appointment of Public Complaints Commissioner

3.—(1) The Lieutenant Governor in Council shall appoint a Public Complaints Commissioner, to hold office for a term not exceeding five years, to exercise the powers and perform the duties assigned to him by this Act and the regulations.

Re-appointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding, in each instance, five years.

Officers, etc.

R.S.O. 1980, c. 418

(3) Such officers and employees as are considered necessary from time to time for the purposes of this Act may be appointed under the *Public Service Act*.

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received by him under this Act.

Monitoring handling of complaints and inquiries

(6) The Commissioner shall monitor the handling of complaints and inquiries by the Bureau and the chief of police.

Annual report

(7) The Commissioner shall report annually on the affairs of his office to the Solicitor General and to the Attorney General and the Attorney General shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Summary of decisions

(8) The Commissioner shall cause to be prepared and published periodically a summary of the decisions, and the reasons therefor, made by the boards of inquiry under this Act.

Audit

(9) The accounts of the Commissioner shall be audited annually by the Provincial Auditor. 1984, c. 63, s. 3.

Panel for boards of inquiry

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry.

Recommendations for appointment

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers, the appointment of whom the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association have jointly recommended in writing to the Attorney General. 1984, c. 63, s. 4 (1-3).

Failure to make joint recommendations

(3a) If the joint recommendations referred to in subsection (3) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Individual recommendations to be considered

(3b) Before making the recommendation referred to in subsection (3a), the Attorney General and the Solicitor General shall consider any recommendations made by the Metropolitan Board of Commissioners of Police alone or the Metropolitan Toronto Police Association alone. 1986, c. 31, s. 1, *part*.

Idem

(4) One-third of the members of the panel shall be persons recommended by the council of The Municipality of Metropolitan Toronto to the Attorney General for appointment. 1984, c. 63, s. 4 (4).

Failure to make recommendations

(4a) If the recommendations referred to in subsection (4) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General. 1986, c. 31, s. 1, *part*.

Term

(5) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Idem

(6) Recommendations made under subsections (3) and (4) shall be submitted to the Attorney General within such time as he may specify.

Members of Police Complaints Board under 1981, c. 43

(7) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (4) of this section, respectively.

1981, c. 43

NOTE: Subsection 34 (1) as mentioned in subsection (7) above repealed the *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43. See—1984, c. 63, s. 34 (1).

Remuneration

(8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council. 1984, c. 63, s. 4 (5-8).

Establishment of Bureau

5.—(1) The chief of police shall establish and maintain for the purposes of this Act a branch of the Metropolitan Police Force to be known as the Public Complaints Investigation Bureau.

Staff

(2) The chief of police shall ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints and inquiries. 1984, c. 63, s. 5.

Where complaints may be made

6.—(1) A member of the public may make a complaint at the Bureau, at any police station in Metropolitan Toronto or at the office of the Commissioner.

Information

(2) The person who receives the complaint shall record the complaint in the prescribed form and shall furnish the complainant with a prescribed statement that sets out the procedures that will be followed respecting the complaint and the rights under this Act of the complainant, together with a copy of the complaint.

Preliminary investigation

(3) Where a complaint is recorded at a police station, the officer in charge of the station shall take all reasonable steps to ensure that all available evidence is gathered that may be lost if not secured immediately and, if appropriate, ensure that such other preliminary investigation as may be warranted is conducted and that a report concerning such preliminary

investigation is prepared and forwarded to the person in charge of the Bureau.

Copy of complaint

(4) Where a complaint is recorded at a police station, the person recording the complaint shall forward forthwith to the Bureau and to the Commissioner a copy of the complaint.

Idem

(5) Where a complaint is recorded at the Bureau, the person recording the complaint shall forward forthwith to the Commissioner a copy of the complaint.

Idem

(6) Where a complaint is recorded at the office of the Commissioner, the person recording the complaint shall forward forthwith to the Bureau a copy of the complaint. 1984, c. 63, s. 6.

Notification by Commissioner

7.—(1) Where a complaint is made by a person not directly affected by the incident, the Commissioner, as soon as practicable after receiving the complaint, shall in writing notify the person directly affected by the incident that a complaint has been made under this Act and advise him that he is entitled to be the complainant.

Where no action to be taken

(2) Where the person directly affected by the incident is not known or can not be found or does not, within thirty days of the date of the notification, file with the Commissioner a written request to be the complainant in the matter, no further action shall be taken under this Act in respect of such complaint.

Action under R.S.O. 1980, c. 381

(3) Nothing in subsection (2) shall prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder, and the chief of police shall notify the Commissioner if any such action is taken and the result thereof and either the chief of police or the Commissioner shall then notify the complainant.

Person deemed directly affected

(4) For the purposes of this section a person who observes an incident shall be deemed to be a person directly affected by the incident. 1984, c. 63, s. 7.

Reclassification by Bureau chief

8.—(1) Upon receipt of a complaint, the person in charge of the Bureau may, with the consent of the Commissioner, reclassify any of the separate allegations within the complaint as an inquiry, and the complainant and the subject officer shall be notified forthwith.

Response

(2) The person in charge of the Bureau shall determine whether any investigation is required in respect of an inquiry,

and if it is, cause such investigation to be conducted, respond to the complainant in writing within sixty days of receipt of the complaint and forward a copy of the response to the Commissioner forthwith.

Reclassification during investigation

(3) The person in charge of the Bureau may, during the course of an investigation under subsection (2), reclassify any of the separate allegations within the inquiry as a complaint, and the complainant, the subject officer and the Commissioner shall be notified forthwith.

Personal record

(4) No reference shall be made in the personal record of any police officer to an inquiry resolved in accordance with subsection (2). 1984, c. 63, s. 8.

Police officer to be informed

9. The person in charge of the Bureau shall inform forthwith the subject officer of the substance of the complaint in the prescribed form, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint. 1984, c. 63, s. 9.

Informal resolution

10.—(1) The person in charge of the Bureau shall consider whether a complaint can be resolved informally and, with the consent of the complainant and the subject officer, may attempt to so resolve the complaint.

Record of informal resolution

(2) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved and the complainant and the subject officer shall each signify in writing his agreement to such resolution.

Copy of record to be furnished

(3) A copy of a record made under subsection (2) shall be furnished forthwith to the Commissioner, the complainant and the subject officer.

Informal resolution

(4) A complaint may be resolved informally by the person in charge of the Bureau in accordance with the procedures in this section at any time during the course of or after an investigation.

Where complaint to continue

(5) Notwithstanding subsection (1), where the Commissioner is of the opinion that the informal resolution was obtained as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue and give reasons therefor in writing to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Review of decision

(6) The decision of the Commissioner under subsection (5) shall be deemed to be made in the exercise of a statutory power of decision within the meaning of the *Judicial Review Procedure Act*. R.S.O. 1980, c. 224

Informal resolution by Commissioner

(7) A complaint may be resolved informally by the Commissioner in accordance with the procedures in this section at any time during the course of an investigation or review by the Commissioner.

No reference in personal record of subject officer

(8) No reference shall be made in the personal record of a subject officer to a complaint resolved under this section, except where misconduct has been admitted by the subject officer. 1984, c. 63, s. 10.

Investigation

11.—(1) Where a complaint is not resolved informally, the person in charge of the Bureau shall cause an investigation to be made forthwith into the complaint in accordance with prescribed procedures.

Interim reports

(2) The person in charge of the Bureau shall forward to the Commissioner, the complainant and the subject officer an interim report in the prescribed form providing a summary of the investigation to date not later than thirty days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation.

Exception

(3) Notwithstanding subsection (2), the person in charge of the Bureau may decide not to make a report to the complainant or the subject officer where, in his opinion, to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the Bureau shall forthwith notify the Commissioner of the reasons for his decision.

Final report

(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report in the prescribed form to be prepared and shall forward a copy thereof to the Commissioner, the chief of police, the complainant and the subject officer.

Idem

(5) A final investigation report prepared under subsection (4) shall,

(a) contain a summary of the complaint and a description of the alleged misconduct by the subject officer;

(b) contain a summary of the investigation and of information obtained from the complainant, the subject officer and witnesses, if any; and

(c) contain a description and analysis of any physical evidence obtained.

Further investigation at request of Commissioner

(6) The Commissioner may, upon receipt of a final investigation report, request that the chief of police cause further investigation to be made into the complaint and the results of any such investigation shall be forwarded to the Commissioner. 1984, c. 63, s. 11.

Withdrawal of complaint

12.—(1) All complaints and inquiries shall be dealt with in accordance with this Act, and shall not be withdrawn except in accordance with this Act.

Notice

(2) A complainant may withdraw a complaint at any time by giving notice, in the prescribed form, to the person in charge of the Bureau, who shall forward a copy thereof to the Commissioner and the subject officer.

Where to continue on complaint

(3) Notwithstanding subsection (2), where the Commissioner is of the opinion that the complainant withdrew the complaint as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue, and give reasons therefor, in writing, to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Review of decision

R.S.O. 1980, c. 224

(4) The decision of the Commissioner to cause the complaint to continue shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Disciplinary action under R.S.O. 1980, c. 381

(5) Notwithstanding subsection (2), where a complaint has been withdrawn by a complainant, such withdrawal shall not prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder and the chief of police shall notify the Commissioner if any such action is taken and the result thereof. 1984, c. 63, s. 12.

Where complaint not to be dealt with

13.—(1) Where it appears to the chief of police that,

(a) a complaint is frivolous, vexatious or made in bad faith;

(b) a complaint is not within the jurisdiction of this Act; or

(c) a complaint is one that could or should be more appropriately dealt with under an Act other than this Act,

the chief of police may decide that the complaint or any part thereof not be dealt with under this Act.

Notice

(2) The chief of police shall notify the Commissioner, the complainant and the subject officer of any decision made under subsection (1).

Disciplinary action under R.S.O. 1980, c. 381

(3) Notwithstanding subsection (1), the decision of the chief of police shall not prevent the chief from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder.

Review by Commissioner

(4) The complainant may, within thirty days of receiving notification under subsection (2), request the Commissioner to review the decision made under subsection (1), in which case all the provisions of this Act relating to a review by the Commissioner apply with necessary modifications.

Extension of time

(5) Notwithstanding subsection (4), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review. 1984, c. 63, s. 13.

Powers and duties of chief of police

14.—(1) The chief of police shall review a final investigation report and he may order such further investigation as he considers advisable and may, unless he decides that no action is warranted,

(a) cause an information alleging the commission of an offence by the subject officer to be laid and refer the matter to the Crown attorney for prosecution;

(b) order that one or more of the allegations contained in the complaint be heard by a board of inquiry;

(c) cause disciplinary proceedings to be taken under the *Police Act* and the regulations thereunder; and

R.S.O. 1980, c. 381

(d) after giving the subject officer ten working days to reply, either orally or in writing, to the complaint, counsel or caution the subject officer regarding his conduct,

but where the chief of police takes action under clause (b), (c) or (d), he shall not take action under any other of those clauses.

Hearing not stayed

R.S.O. 1980, c. 381

(2) Where the chief of police causes an information to be laid under clause (1) (a), such action shall not stay any disciplinary proceedings under the *Police Act* or any hearing by a board of inquiry unless the presiding officer or the board, as the case may be, is of the opinion that the hearing should be stayed until the court proceedings have been concluded.

Review by Commissioner

(3) A subject officer may within thirty days of the taking of any action under clause (1) (d), request the Commissioner to review the action, in which case all the provisions of this Act relating to a review by the Commissioner shall apply with necessary modifications.

Extension of time

(4) Notwithstanding subsection (3), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review.

Expunging from personal record

(5) Any action taken under clause (1) (d) shall be expunged from the personal record of the subject officer upon the expiration of a period of two years during which no other disciplinary action has been noted on the record.

Notice of action taken

(6) The chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Commissioner, the complainant and the subject officer and, where his decision is that no action is warranted or he has taken action under clause (1) (d), the chief of police shall give his reasons therefor.

Designation by chief of police

(7) The chief of police may designate any police officer of the rank of inspector or higher to exercise any of his powers and perform any of his duties under this Act and the police officer so designated has the powers and duties set out in the designation and where any power is conditional on the opinion of the chief of police, the requisite opinion shall be that of the police officer so designated. 1984, c. 63, s. 14.

Application of s. 23

R.S.O. 1980, c. 381

15.—(1) Where the chief of police has caused disciplinary proceedings to be taken under the *Police Act* and the regulations thereunder, subsections 23 (6), (8), (13), (14) and (15) of this Act apply with necessary modifications to a hearing held in connection with such proceedings.

Notice of decision

(2) The chief of police or, if he is not the person who holds a hearing referred to in subsection (1), the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the Commissioner, the complainant and the subject officer. 1984, c. 63, s. 15.

Police officer may appeal

16. Where a hearing referred to in subsection 15 (1) has been held and a penalty has been imposed upon a subject officer, the officer may appeal in accordance with the provisions of this Act and not as provided in the *Police Act* and the regulations thereunder. 1984, c. 63, s. 16.

R.S.O. 1980, c. 381

Notice of appeal

17.—(1) A notice of appeal under section 16 shall be served on the Commissioner and the chief of police within fifteen days after the subject officer receives notice of the penalty imposed, and the Commissioner shall notify the complainant forthwith.

Extension of time

(2) Where a notice of appeal is filed after the time set out in subsection (1), the Commissioner shall assign, in accordance with the regulations, the matter to a member of the panel appointed on a recommendation made under subsection 4 (2) who may, if satisfied that there are reasonable grounds for doing so, extend the time for appealing and give such directions as he considers proper consequent upon the extension. 1984, c. 63, s. 17.

Commissioner may investigate

18.—(1) Notwithstanding any other provision of this Act, the Commissioner may investigate the allegations in the complaint,

(a) at any time after he receives the first interim report under subsection 11 (2) or the thirty-day period mentioned therein has expired;

(b) upon the request of the chief of police; or

(c) where he has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 11.

Review of decision

(2) A decision to take action under clause (1) (c) shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

R.S.O. 1980, c. 224

Notice to chief of police

(3) The Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an investigation under clause (1) (a) or (c) and shall give his reasons therefor in writing.

Idem

(4) Where the Commissioner conducts an investigation under subsection (1), he shall forward to the complainant, the subject officer, the person in charge of the Bureau and the chief of police an interim report in the prescribed form providing a summary of the investigation to date, not later than thirty days after he has given notification of his intention to conduct an investigation, and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation, and upon the completion of his investigation he shall prepare a final investigation report and forward a copy thereof to the same persons.

Notice of action taken

(5) The chief of police, upon receipt of a final investigation report under subsection (4), shall review the report, together with any final investigation report prepared under subsection 11 (4), and shall make a decision in accordance with section 14 and shall notify all persons in accordance with subsection 14 (6).

Delegation

(6) The Commissioner may designate any person appointed under subsection 3 (3) to exercise any of his powers and perform any of his duties under this Act, and the person so designated has the powers and the duties set out in the designation, and where any power is conditional upon the opinion of the Commissioner, the requisite opinion shall be that of the designated person. 1984, c. 63, s. 18.

Request for review

19.—(1) Where a complainant is dissatisfied with the decision made on a disciplinary proceeding arising out of his complaint that is not a decision of a board of inquiry or with action taken by the chief of police under clause 14 (1) (d) or with a decision of the chief of police that no action is warranted, he may within thirty days of receipt of notification under subsection 14 (6) or 15 (2) request the Commissioner to review the matter.

Extension of time

(2) Notwithstanding subsection (1), where the Commissioner is satisfied that there are reasonable grounds for granting an extension the Commissioner may extend the time for requesting a review.

Hearing may be ordered

(3) Where the Commissioner receives a request under subsection (1), he shall review the matter and may, after such review, order a hearing by a board of inquiry if he believes that, in the public interest, such a hearing is required or he may decide to take no further action.

Notice

(4) The Commissioner shall give forthwith written notice to the chief of police, the complainant and the subject officer of

his decision under subsection (3) and, where his decision is to take no further action, shall give his reasons therefor.

Where appeal under s. 16

(5) Where a subject officer has appealed under section 16 a hearing ordered under subsection (3) shall be heard together with that appeal. 1984, c. 63, s. 19.

Powers on investigation or review

20.—(1) For the purposes of an investigation under section 18 or a review under section 19, the Commissioner may, where he has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, after informing the chief of police, enter a police station and examine therein books, papers, documents and things related to the complaint.

Powers on inquiry

R.S.O. 1980, c. 411

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation or review as if it were an inquiry under that Act.

Appointment of person to make investigation or review

(3) The Commissioner may, in writing, appoint a person to make any investigation or review he is authorized to make and the person so appointed has all the powers and duties of the Commissioner relating to the investigation and the review.

Identification

(4) The Commissioner shall issue a certificate of appointment to any person appointed to make an investigation or review under subsection (3), which certificate shall contain a photograph of the person appointed, and the person appointed, while exercising any powers or performing any duties in respect of the investigation or review, shall produce the certificate of appointment upon request.

Report

(5) The person appointed to make an investigation or review shall report the results of his investigation or review to the Commissioner.

Obstruction

(6) No person shall obstruct the Commissioner or a person appointed by him to make an investigation or review or withhold from him or conceal or destroy any books, papers, documents or things related to the investigation or review.

Search warrant

(7) Where a justice of the peace is satisfied upon an *ex parte* application by the Commissioner or by a person appointed by him under subsection (3) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to an investigation or review, the justice of the peace may issue an order authorizing the person making the application, together with such persons as he calls upon to assist

him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between 6 a.m. and 9 p.m., standard time, unless the justice of the peace, by the order, otherwise authorizes.

Removal of books, etc.

(8) The Commissioner may, upon giving a receipt therefor, remove any books, papers, documents or things examined under subsection (1) or (7) relating to the investigation or review and shall with reasonable dispatch cause to be made copies of such books, papers or documents and return them promptly thereafter to the person from whom they were removed.

Admissibility of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the Commissioner is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

Appointment of experts

(10) The Commissioner may appoint an expert to examine books, papers, documents or things examined under subsection (1) or (7). 1984, c. 63, s. 20.

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the Metropolitan Board of Commissioners of Police shall forward such report along with their comments and any comments submitted to them by the chief of police or the Metropolitan Toronto Police Association, to the Attorney General, the Solicitor General and the Commissioner. 1984, c. 63, s. 21.

Where board of inquiry to be constituted

22.—(1) Where,

(a) the chief of police has ordered that a matter be heard by a board of inquiry;

(b) a police officer has appealed under section 16; or

(c) the Commissioner has, under subsection 19 (3), ordered a hearing,

a board of inquiry shall be constituted in accordance with this section.

Assignment to board of inquiry

(2) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a minor nature, he shall assign, in accordance with the regulations, a member of the panel who was appointed on a recommendation made under subsection 4 (2) to sit alone to conduct the hearing.

Idem

(3) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a serious nature, he shall assign, in accordance with the regulations, three members of the panel to conduct the hearing.

Constitution of board R.S.O. 1980, c. 381

(4) Where, following a disciplinary hearing under the *Police Act* a board of inquiry is to be constituted, the board shall be constituted in accordance with subsection (3).

Who shall be on board

(5) The chairman of a board of inquiry constituted under subsection (3) or (4) shall be a person appointed to the panel on a recommendation made under subsection 4 (2), one member shall be a person appointed to the panel on a recommendation made under subsection 4 (3) and one member shall be a person appointed to the panel on a recommendation made under subsection 4 (4).

Statement of alleged misconduct

(6) The chief of police, where he has ordered a hearing, and the Commissioner, where he has ordered a hearing, shall provide the parties with a concise statement of the allegations of misconduct to be heard by the board.

Record

(7) Where, following a hearing referred to in subsection 15 (1), a board of inquiry has been constituted, the chief of police shall forward the record of that hearing, including the transcript, all documents, evidence and exhibits considered at that hearing, to the board.

Costs of record

(8) Where the Commissioner has ordered the hearing he shall pay the costs of preparing the record. 1984, c. 63, s. 22.

When hearing *de novo* and when on record

23.—(1) The hearing before the board of inquiry shall be *de novo*, except where the chief of police has prepared a record under subsection 22 (7), in which case the hearing shall be on the record but the board may, in special circumstances, hear such evidence as the board considers advisable.

Parties

(2) The parties to a hearing shall include,

(a) the chief of police, in respect of appeals instituted by the subject officer under section 16; and

(b) the Attorney General, except where an appeal has been instituted by the subject officer under section 16.

Adding parties

(3) A party may be added by the board at any stage of the hearing upon such terms as the board considers proper.

Attorney General to have carriage

(4) The Attorney General, where he is a party to the hearing, has carriage of the matter.

Notice of hearing

(5) The board shall appoint a time for a hearing and give written notice thereof to the parties.

Opportunity to examine evidence

(6) The subject officer and the complainant shall be afforded an opportunity to examine before the hearing any physical or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Board not to communicate with party

(7) The board conducting a hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Oral evidence

(8) The oral evidence given at the hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Adjournment for view

(9) The board may, where it appears to be in the interests of justice, direct that the board and the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Only members at hearing to participate in decision

(10) No member of the board shall participate in a decision following the hearing unless he was present throughout the

hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision shall be given unless all members so present participate in the decision.

Decision

(11) A decision of a member of a board of inquiry sitting alone and a decision of a majority of the members of a board comprising three members is a decision of the board.

Release of documents

(12) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him within a reasonable time after the matter in issue has been finally determined.

Police officer not required to give evidence R.S.O. 1980, c. 484

(13) Notwithstanding section 12 of the *Statutory Powers Procedure Act*, the subject officer shall not be required to give evidence at the hearing nor shall any statement or answer required to be given by him in respect of the complaint made against him be admitted in evidence at the hearing, except with his consent.

Statement or admission not admissible in evidence

(14) Where the person in charge of the Bureau or the Commissioner attempts to resolve a complaint informally and the complaint is not so resolved, any statement or admission made during such attempt by the subject officer or by the complainant shall not be admitted in evidence at the hearing, except with the consent of the subject officer or the complainant, as the case may be.

Proof of misconduct

(15) No finding of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt.

Imposition of penalty

(16) Where a board constituted under subsection 22 (2) finds the subject officer guilty of misconduct, it may,

(a) direct that days off not exceeding five days be forfeited;

(b) direct that pay not exceeding three days pay be forfeited; or

(c) reprimand the police officer.

Idem

(17) Where a board constituted under subsection 22 (3) finds the subject officer guilty of misconduct, it may,

(a) dismiss the police officer from the Metropolitan Police Force, whereupon the officer is thereby dismissed;

(b) direct that the police officer resign from the Metropolitan Police Force and, in default of resigning within seven days, be summarily dismissed;

(c) reduce the police officer in rank or gradation of rank and in pay in accordance with the rank to which he is reduced;

(d) direct that days off not exceeding twenty days be forfeited;

(e) direct that pay not exceeding five days pay be forfeited; or

(f) reprimand the police officer, which reprimand may be in lieu of or in addition to any other penalty imposed.

Notice of decision

(18) The board shall give forthwith written notice of its decision and the reasons therefor to the chief of police, the complainant, the subject officer, the Commissioner, the Solicitor General and the Attorney General.

No reference to hearing

(19) No reference to a hearing conducted by the board shall be made in the personal record of the subject officer unless the board has made a finding of misconduct.

Costs may be paid

(20) The Metropolitan Board of Commissioners of Police may, in such cases and to such extent as it thinks fit, pay any legal costs incurred by a subject officer in respect of a hearing conducted by a board and an appeal under section 24. 1984, c. 63, s. 23.

Appeal

24.—(1) A party to a hearing by a board may appeal within thirty days of the decision of the board to the Divisional Court.

Solicitor General and Attorney General entitled to be heard

(2) The Solicitor General, and the Attorney General where he is not entitled to appeal under subsection (1), are entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

What may be appealed

(3) An appeal under this section may be made on a question that is not a question of fact alone or from a penalty imposed under subsection 23 (17), or on both the question and the penalty. 1984, c. 63, s. 24.

How notice, etc., may be served

25. Any notice, report or other material required to be given, furnished, forwarded or otherwise served under this Act is sufficiently served if delivered personally or sent by

prepaid first class mail addressed to the person on whom service is required to be made at his last known or usual place of abode. 1984, c. 63, s. 25.

Matters confidential

26.—(1) Every person engaged in the administration of this Act and the regulations, including a member of the Metropolitan Police Force, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties and shall not communicate any such matter to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations or the *Police Act* and the regulations thereunder; R.S.O. 1980, c. 381

(b) as may be required for the due enforcement of the law;

(c) to his counsel; or

(d) with the consent of the person to whom the matter relates.

Testimony

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

What is inadmissible in evidence

(3) No record, report, writing or document arising out of a complaint is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

Idem

(4) No oral statement, answer or admission referred to in subsections 23 (13) and (14) is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder. 1984, c. 63, s. 26. R.S.O. 1980, c. 381

Application of 1984, c. 11, s. 146

27. Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to a board hearing. 1984, c. 63, s. 27.

R.S.O. 1980, c. 325 does not apply

28. The *Ombudsman Act* does not apply to anything done under this Act. 1984, c. 63, s. 28.

Agreement for contributions

29. The Attorney General, with the approval of the Lieutenant Governor in Council, and The Municipality of Metropolitan Toronto may enter into an agreement to provide for the payment by the municipality to the Treasurer of Ontario on such terms and conditions as may be agreed upon of contributions in respect of the moneys required for the purposes of this Act. 1984, c. 63, s. 29.

Offence

30. Any person who contravenes subsection 20 (6), subsection 26 (1) or section 27 is guilty of an offence and on conviction is liable to a fine of not more than $2,000. 1984, c. 63, s. 30.

Regulations

31. The Lieutenant Governor in Council may make regulations,

(a) respecting the reporting and publication of decisions of boards of inquiry;

(b) assigning duties to the Commissioner;

(c) establishing a system that provides for the assignment of panel members on a rotational basis;

(d) prescribing forms and providing for their use; and

(e) prescribing any matter that by this Act is required to be or is referred to as prescribed. 1984, c. 63, s. 31.

Advisory committee

32.—(1) There shall be a committee composed of,

(a) the Deputy Attorney General;

(b) the Deputy Solicitor General;

(c) the chairman of the Ontario Police Commission;

(d) the Commissioner;

(e) the Assistant Deputy Attorney General-Criminal Law; and

(f) such other persons as may be jointly appointed by the Attorney General and the Solicitor General.

Duties

(2) It is the duty of the committee,

(a) to maintain under review the practice and procedures under this Act;

(b) to receive and consider matters brought to the attention of the committee by any person having an interest in the operation of the system for handling complaints under this Act;

(c) to make such recommendations as the committee considers appropriate for the improvement of the system for handling complaints; and

(d) to perform such other duties or functions as the committee may be requested to perform by the Attorney General or the Solicitor General.

Recommendations

(3) Any recommendations made under clause (2) (c) shall be forwarded by the committee to both the Attorney General and the Solicitor General. 1984, c. 63, s. 32.

Recommendations of Attorney General

33. On or before the day that is three years after the day this Act comes into force, the Attorney General shall, after having reviewed the operation of the panel, the Board and the advisory committee referred to in sections 4 and 32 respectively, recommend to the Lieutenant Governor in Council whether those bodies should continue in existence or be terminated. 1984, c. 63, s. 33.

Repeal

34.—(1) The *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43, is repealed.

Proceedings continued under 1981, c. 43

(2) Notwithstanding subsection (1), the *Metropolitan Police Force Complaints Project Act, 1981* shall continue in force and apply to a complaint that is made before the day this Act comes into force, for the purpose of continuing the proceedings in respect of that complaint, but the proceedings at any Board hearing commenced after the day this Act comes into force shall be in accordance with the provisions of this Act.

Commencement

35. This Act comes into force on the 21st day of December, 1984.

Short title

36. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Act, 1984*.

ONTARIO REGULATION 494/85

under the Metropolitan Toronto Police Force Complaints Act, 1984

GENERAL

FORMS

1. A complaint shall be recorded in Form 1. O. Reg. 494/85, s. 1.

2. The subject officer shall be informed of the substance of the complaint in Form 1A. O. Reg. 494/85, s. 2.

3. The statement to be furnished under subsection 6 (3) of the Act to the person making the complaint shall be in Form 2. O. Reg. 494/85, s. 3.

4. A record of an informal resolution of a complaint shall be in Form 3. O. Reg. 494/85, s. 4.

5. An interim or final investigation report under subsection 11 (3), 11 (4) or 18 (4) of the Act shall be in Form 4. O. Reg. 494/85, s. 5.

6. A notice of withdrawal of a complaint shall be in Form 5. O. Reg. 494/85, s. 6.

BUREAU INVESTIGATIONS

7. An investigation under section 11 of the Act shall be pursued quickly and diligently and the investigator shall endeavour to obtain all information that may have a bearing on the complaint. O. Reg. 494/85, s. 7.

8. All information and evidence obtained in the investigation shall be recorded and preserved. O. Reg. 494/85, s. 8.

9. The investigator shall endeavour to interview the person making the complaint and the subject officer and to obtain written statements from them. O. Reg. 494/85, s. 9.

10. The investigator shall endeavour to interview the witnesses named by the person making the complaint and the subject officer and witnesses located as a result of the investigation and to obtain written statements from such witnesses. O. Reg. 494/85, s. 10.

11. The investigator shall endeavour to obtain photographs of all personal injuries or damage to property alleged and any other information and evidence that is relevant to the investigation and could only be preserved by way of photographs. O. Reg. 494/85, s. 11.

12. Where appropriate, the investigator shall attend at the scene of the alleged misconduct and obtain any relevant evidence. O. Reg. 494/85, s. 12.

13. The investigator shall endeavour to obtain all hospital records and medical reports related to the complaint. O. Reg. 494/85, s. 13.

14. The investigator shall make notes during or as soon as possible after completion of each investigative step and the notes shall be preserved. O. Reg. 494/85, s. 14.

15. Any information, notes or evidence, except physical evidence, that is required to be preserved under sections 8 and 14 shall be retained for a period of two years after the complaint is finally disposed of. O. Reg. 494/85, s. 15.

ASSIGNMENT OF PANEL MEMBERS

16. The Commissioner shall prepare three lists of names of persons appointed to the panel under subsection 4 (1) of the Act; one consisting of those persons recommended under subsection 4 (2) of the Act; one consisting of those persons recommended under subsection 4 (3) of the Act and one consisting of those persons recommended under subsection 4 (4) of the Act. O. Reg. 494/85, s. 16.

17. For the purposes of sections 17 and 22 of the Act, the Commissioner shall assign, to consider extending time to appeal or to conduct a hearing, as the case may be, the person whose name appears at the beginning of the appropriate list or lists. O. Reg. 494/85, s. 17.

18. The name of a person assigned to conduct a hearing shall, following such assignment, be removed from the beginning of the list and added to the end of the list. O. Reg. 494/85, s. 18.

19. If a person is unable to perform his or her duties or is unable to act within a time determined by the Commissioner to be reasonable, the Commissioner, upon being so informed, shall assign as a replacement the next person on the list, and the name of the person who is so replaced shall remain at the beginning of the list. O. Reg. 494/85, s. 19.

20. If, at any time, a person resigns as a member of the panel, the name of that person shall be deleted from the appropriate list. O. Reg. 494/85, s. 20.

21. If, at any time, a new person is appointed to the panel, the name of that person shall be placed at the end of the appropriate list. O. Reg. 494/85, s. 21.

Schedule

CODE OF OFFENCES

1. Any chief of police, other police officer or constable commits an offence against discipline if he is guilty of,

(*a*) DISCREDITABLE CONDUCT, that is to say, if he,

(i) acts in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force,

(ii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,

(iii) uses profane, abusive or insulting language to any other member of a police force,

(iv) wilfully or negligently makes any false complaint or statement against any member of a police force,

(v) assaults any other member of a police force,

(vi) withholds or suppresses a complaint or report against a member of a police force,

(vii) is guilty of an indictable offence or an offence punishable upon summary conviction under the *Criminal Code* (Canada), or

(viii) contravenes any provision of the *Police Act* or the regulations;

(*b*) INSUBORDINATION, that is to say, if he,

(i) is insubordinate by word, act or demeanour, or

(ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order;

(*c*) NEGLECT OF DUTY, that is to say, if he,

(i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force,

(ii) idles or gossips while on duty,

(iii) fails to work in accordance with orders, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause,

(iv) by carelessness or neglect permits a prisoner to escape,

(v) fails, when knowing where an offender is to be found, to report him or to make due exertions for bringing him to justice,

(vi) fails to report a matter that it is his duty to report,

(vii) fails to report anything that he knows concerning a criminal or other charge, or fails to disclose any evidence that he, or any person within his knowledge, can give for or against any prisoner or defendant,

(viii) omits to make any necessary entry in any official document or book,

(ix) feigns or exaggerates sickness or injury to evade duty,

(x) is absent without leave from or late for parade, court or any other duty, without reasonable excuse, or

(xi) is improperly dressed, dirty or untidy in person, clothing or equipment while on duty;

(*d*) DECEIT, that is to say, if he,

(i) knowingly makes or signs a false statement in an official document or book,

(ii) wilfully or negligently makes a false, misleading or inaccurate statement pertaining to official duties, or

(iii) without lawful excuse destroys or mutilates an official document or record or alters or erases an entry therein;

(*e*) BREACH OF CONFIDENCE, that is to say, if he,

(i) divulges any matter which it is his duty to keep secret,

(ii) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the

lawful execution of such warrant or service of such summons,

(iii) without proper authority communicates to the public press or to any unauthorized person any matter connected with the police force,

(iv) without proper authority shows to any person not a member of the police force or any unauthorized member of the force any book, or written or printed paper, document or report that is the property of the police force,

(v) makes any anonymous communication to the chief of police or superior officer or authority,

(vi) canvasses, except as authorized by the Act or the regulations, any person in respect of a matter concerning the police force,

(vii) signs or circulates a petition or statement in respect to a matter concerning the police force, except through the proper official channel or correspondence or established grievance procedure, or

(viii) calls or attends any unauthorized meeting to discuss any matter concerning the police force;

(*f*) CORRUPT PRACTICE, that is to say, if he,

(i) takes a bribe,

(ii) fails to account for or to make a prompt, true return of money or property received in an official capacity,

(iii) directly or indirectly solicits or receives a gratuity, present, pass, subscription or testimonial without the consent of the chief of police,

(iv) places himself under a pecuniary or other obligation to a licensee concerning the granting or refusing of whose licence a member of the police force may have to report or give evidence,

(v) improperly use his character and position as a member of the police force for private advantage,

(vi) in his capacity as a member of the police force writes, signs or gives, without the consent of the Chief of Police, a reference or recommendation to a member or former member of the police force, or any other police force, or

(vii) without the consent of the chief of police, supports in any way an application for a licence of any kind;

(*g*) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, that is to say, if he,

(i) without good and sufficient cause makes an unlawful or unnecessary arrest,

(ii) uses any unnecessary violence to a prisoner or other person contacted in the execution of duty, or

(iii) is uncivil to a member of the public;

(*h*) DAMAGE TO CLOTHING OR EQUIPMENT, that is to say, if he,

(i) wilfully or carelessly causes waste, loss or damage to any article of clothing or equipment, or to any book, document or other property of the police force, or

(ii) fails to report waste, loss or damage however caused;

(*i*) CONSUMING INTOXICATING LIQUOR IN A MANNER PREJUDICIAL TO DUTY, that is to say, if he,

(i) while on duty is unfit for duty through drinking intoxicating liquor, or

(ii) reports for duty and is unfit for duty through drinking intoxicating liquor, or

(iii) except with the consent of a superior officer or in the discharge of duty, drinks or receives from any other person intoxicating liquor on duty, or

(iv) demands, persuades or attempts to persuade another person to give or purchase or obtain for a member of the police force any intoxicating liquor, while on duty;

(*j*) LENDING MONEY TO A SUPERIOR; OR

(*k*) BORROWING MONEY FROM OR ACCEPTING A PRESENT FROM ANY INFERIOR IN RANK.

2. Any chief of police, other police officer or constable also commits an offence against discipline and shall be liable to punishment as provided in the regulations, if he connives at, abets or is knowingly an accessory to any offence against discipline under this code. R.R.O. 1980, Reg. 791, Sched.